
Authorized Signature

FISCAL NOTE FOR PROPOSED RULES

Rule Title:

PUBLIC WATER SYSTEMS

64 CSR 3

Type of Rule:

 X

Legislative

 Interpretive

 Procedural

Agency:

Health and Human Resources

Address:

One Davis Square

Suite 100, East

Charleston, WV 25301

Phone Number:

304 558-2971

Email:

ann.a.goldberg@wv.gov

Fiscal Note Summary

Summarize in a clear and concise manner what effect this measure will have on costs and revenues of state government.

The Public Water Systems Rule (64CSR3) is being amended to address changes in the federal safe drinking water regulations and also to comply with SB 373, adopted during the 2014 legislative session, by outlining the requirements for public water utilities to submit Source Water Protection Plans (SWPP) to the Department of Health and Human Resources (DHHR), Bureau for Public Health (BPH), for review and approval. The review of the SWPP submittals including corrective action, public hearings, rule development, interaction with the local county health officers, updating of the zone of critical concern model, engineering reviews, development of an online template for source water protection data entry are all required program components. All Source Water Protection Plans must be submitted by July 1, 2016, to the BPH Commissioner. The Commissioner then has 180 days to approve, reject or modify the Source Water Protection Plans (SWPP). Future updates of the utilities protection plans will be required every 3 years.

The DHHR used an estimated 124 water utility systems in calculating the costs. The DHHR estimates the total cost for the first year of implementation at \$1,500,000. Funding in the amount of \$1.5 million was provided to the DHHR during the 2014 legislative session for FY2015 only. Additional ongoing costs are anticipated as full implementation of the rule will take a number of years.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

Effect of Proposal	Fiscal Year		
	2015 Increase/Decrease (use "-")	2016 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	1,500,000	387,395	387,395
Personal Services	295,605	295,605	295,605
Current Expenses	1,204,395	91,790	91,790
Repairs and Alterations	0	0	0
Buildings	0	0	0
Equipment	0	0	0
Land	0	0	0
Other Assets	0	0	0
<small>FN Water Rule 73114 revised 7/31/2014</small>			
2. Estimated Total Revenues		0	0

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues.

The implementation of this project will require 5 FTE's, these positions include 3.0 FTE - Geologist III or Environmental Resources Specialists III (\$40,000 per FTE), .5 Office Assistant (\$10,500), .5 Geographic Information Systems Program Manager (\$24,500), .5 Geographic Information Systems Database Administrator (\$22,000), and a .5 Environmental Resources Program Manager (\$22,000). Salaries for FY 2015 are projected to be \$199,000.

Employee Benefits for Administration Fees, FICA, PERS, Workers Compensation and OPEB are estimated at \$96,605. This estimate is based on health insurance at \$7,836 per FTE x 5 = \$39,180; FICA retirement and workers' compensation at 23.46% of personal services is \$46,685, WV OPEB contribution is \$164 per month X 12 months = \$1,968 per year for each insurance policy holder or \$9,840 per year. Finally, administration fees are \$180 per FTE x 5 = \$900.

Current expenses for FY 2015 totaling \$1,204,395 are calculated as follows: operational office expenses at \$23,750, computer equipment at \$15,000, travel at \$28,040, development of a review guidance document for surface water under the direct influence of groundwater systems at \$71,000, a hydrologic review of the Karst Hydrologic Flow patterns in Jefferson County, West Virginia at \$150,000, early warning training workshop at \$3,000, and updating the zone of critical concern model at \$68,000 are included.

An estimated cost for web site development to enable public water systems to report their source water protection plans electronically is included. The estimated cost of \$250,000 is based on similar work performed for another BPH program, which involved over 700 hours to convert an existing data management program to a web based effort. This included project management, analysis and design, application development, system testing and operations support. Because this is a completely new data management system, it is estimated that it will require analysis, design and application development work. It is estimated there will be \$40,000 in system usage fees for each fiscal year.

Protection plan engineering and technical reviews to assist in protection plan development and BPH review are estimated at \$371,605. These services will be acquired through appropriate purchasing processes and will be ongoing costs for FY2015. Contractual Support to Develop Significant Potential Contaminate Source Database would be acquired through appropriate purchasing process and cost are estimated \$100,000. Public hearings for review of submitted SWAPP reports are estimated at \$1000/system for 124 systems for a total of \$124,000.

The general revenue appropriation of \$1,500,000 is considered one time funding for FY2015. The rule authorizes the collection of fines and penalties, however, assessment and collection of any fines and penalties will not begin until at least FY2017 after water utilities have failed to submit their SWPP.

Memorandum

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

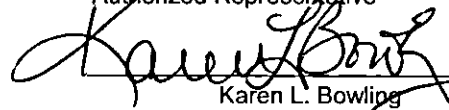
*Additional ongoing costs may be incurred associated with the mandatory public hearings and review of updated SWPP submissions. It is speculative as to the amounts required to cover these costs as full implementation of the rule will take a number of years.

Date

Agency

Authorized Representative

Department of Health and Human Resources


Karen L. Bowling
Cabinet Secretary

Legislative Rule, 64CSR3
Department of Health and Human Resources
Bureau for Public Health
Public Water Systems

BRIEF SUMMARY

The Bureau for Public Health (BPH) is the state agency that has been delegated primacy, by the federal US EPA, for implementation and enforcement of the Safe Drinking Water Act (SDWA). This rule governs all public water systems in the state. The BPH makes frequent amendments to this rule to incorporate any changes made in the federal SDWA regulations. This proposed amendment makes two substantive changes to the existing rule.

First, section 10 of the rule adopts by reference the National Primary Drinking Water Regulations 40 CFR 141, but in this amendment the State of West Virginia has opted not to adopt certain portions of Subpart Y, the Revised Total Coliform rule. The revisions made at the federal level would have allowed states to monitor small public water systems LESS frequently. Due to our state's historical problem with small public water systems being compliant with monitoring and reporting, we have decided not to adopt that portion of Subpart Y and to stay with the current MORE frequent monitoring for total coliform at public water systems throughout the state.

Second, the next major part of the amendments to this rule are made to comply with changes in the state law with respect to source water protection planning enacted in SB 373 from the 2014 Legislative Session. Definitions have been added and the rule goes into great detail about the requirements for public water utilities to update their existing or file a new comprehensive Source Water Protection Plan (SWPP) on or before the statutory deadline of July 1, 2016. Sections 14, 15 and 16 of the proposed rule are all new and contain the BPH requirements for SWPP, the grant program and the proposed schedule for submission of SWPP. There are also changes made to section 17 on enforcement of the rule that reflect changes made to BPH's enforcement powers in SB 373.

STATEMENT OF CIRCUMSTANCES

The changes in the rule are made to update adoption by reference of the National Primary Drinking Water Regulations, with the exception of the total coliform monitoring. Secondly, the rule is mandated by SB 373 changes to WV Code in §16-1-9a(b).

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: August 1, 2014

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) DHHR Bureau for Public Health
350 Capitol Street, Room 702
Charleston, WV 25301
(304) 558-2971

LEGISLATIVE RULE TITLE: Public Water Systems

1. Authorizing statute(s) citation WV Code §§ 16-1-4, 16-1-9a, 16-1-9c

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

b. What other notice, including advertising, did you give of the hearing?
N/A

c. Date of Public Hearing(s) or Public Comment Period ended:

N/A

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X

No comments received _____

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

N/A

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all written correspondence regarding this rule: (Please type)

Ann Goldberg, Director
Public Health Regulations
350 Capitol Street, Room 702

Charleston, WV 25301
(304) 558-2971
ann.a.goldberg@wv.gov
fax (304) 558-1035

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

William Toomey, Manager
OEHS, Source Water
Assessment & Protection
350 Capitol Street, Room 313
Charleston, WV 25301
william.j.toomey@wv.gov
fax (304) 558-1291

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of ~~hearing~~ comment period:

July 1, 2014 - July 31st, 2014

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

PUBLIC WATER SYSTEMS – 64CSR3

Title 64 Series 3
PUBLIC WATER SYSTEMS
Legislative Rule
Bureau for Public Health
Department of Health and Human Resources

Summary of Public Comments and Agency Responses:

The Bureau for Public Health would like to thank all of the people and organizations that submitted comments to this rule. The Bureau for Public Health received 10 comments from concerned citizens, 5 from Associations or organizations with an interest in public water, 3 comments from water utility officials and 1 from the Executive Director of a local health department. The Bureau for Public Health read and considered each of the comments with care and attention.

Comments #1, #3, #4, #5, #7, #8, #9, #10 and #16:

Many of the comments touched on three common themes: all mentioned these three themes.

1. Commenters stressed the importance in the law of public participation in the planning and development of Source Water Protection Plans (SWPP).

2. A second common theme in the comments enumerated above was to encourage public water utilities to take additional steps, above and beyond those required by law, to protect their water supply.

3. A third recurring comment, not just from the citizen commenters, but also from Public Water Utilities (Comments #11, #15 & #18), the West Virginia Rivers Coalition (Comment #2) and the West Virginia Rural Water Association (Comment #6) has to do with the funding for the program and/or the fiscal note accompanying the rule.

Response #1, #3, #4, #5, #7, #8, #9, #10 and #16 :

No changes were made to the rule in response to these comments.

Comment #2:

The WV Rivers Coalition offered to collaborate with BPH and the public water utilities to educate the public about the role they can play in the source water protection planning and implementation process.

Response #2:

No changes were made to the rule in response to this comment.

Comment #5:

In a post script this commenter suggested that “perhaps you need to extend the comment period...”

Response #5:

State law requires that to the rule be filed for a 30-day comment period. No changes were made to the rule in response to this comment.

Comment #6:

The West Virginia Rural Water Association graciously acknowledged the collegial atmosphere at the stakeholders' discussion meeting in Flatwoods held prior to filing the rule for public comment. The West Virginia Rural Water Association proposed no changes to the rule.

Response #6:

No changes were made to the rule in response to this comment.

Comment #11:

The Morgantown Utility Board also thanked the BPH for the pre-filing discussion. The letter from MUB contained some specific suggestions for insertion into the rule.

Response #11:

No changes were made to the rule in response to this comment.

Comment #12, #13 and #17:

These three comments come from the West Virginia Dental Hygienists' Association, the West Virginia Oral Health Coalition and the Marshall University Community and Oral Health Team, respectively. All three comments support the rule.

Response #12, #13 and #17:

No changes were made to the rule in response to these comments.

Comment #14:

This comment included a number of suggestions to change or add language in the rule.

Response #14:

No changes were made to the rule in response to this comment.

Comment #15:

The Parkersburg Utility Board also thanked the BPH for the pre-filing discussion. The letter from Parkersburg Utility Board also contained a few specific suggestions for insertion into the rule.

Response #15:

No changes were made to the rule in response to this comment.

PUBLIC WATER SYSTEMS – 64CSR3

Comment #18:

The City of Fairmont Water Department comments included six specific suggestions for changes to the rule.

Response #18:

No changes were made to the rule in response to this comment.

Comment #19:

The Kanawha-Charleston Health Department comments included six specific suggestions for changes to the rule.

Response #19:

No changes were made to the rule in response to this comment.

Goldberg, Ann A

From: Steven Runfola <stevenrunfola@gmail.com>
Sent: Tuesday, July 22, 2014 12:01 PM
To: Goldberg, Ann A; Toomey, William J
Subject: Resident comments on The DHHR - Bureau for Public Health (BPH) rule implementing the new source water protection plan requirements in SB 373 :

Dear Ms. Goldberg and Mr. Toomey:

I am a WV resident and would like to make the following comments on The DHHR - Bureau for Public Health (BPH) rule implementing the new source water protection plan requirements in SB 373 :

- 1. Public engagement is critical in the source water protection process** – in SB 373, the Legislature made it clear that public engagement is to be a critical component of the planning process. The rule needs to be explicit that “every effort” shall be made to inform and engage the public at all levels of the development and implementation of the protection plan.
- 2. Support utilities that go above and beyond minimum requirements** – we support BPH's encouragement to utilities taking additional steps to protect its water supply.
- 3. Sufficiently fund the new requirements** - It is crucial that BPH be funded sufficiently to oversee this process so that detailed, realistic, site-specific source water protection plans are written that have broad community support and that are likely to be implemented.

Thank you
Steve Runfola
45 Park Ridge Dr.
Morgantown, WV. 26508
304-291-0770



WEST VIRGINIA RIVERS COALITION

3501 MacCorkle Ave. SE #129 • Charleston, WV 25304 • (304) 637-7201 • www.wvrivers.org

July 22, 2014

Ann A. Goldberg, Director
Public Health Regulations
350 Capitol Street, Rm 702
Charleston, WV 25301
ann.a.goldberg@wv.gov

William Toomey, Manager
OEHS, Source Water Assessment & Protection
350 Capitol Street, Rm 313
Charleston, WV 25301
William.J.Toomey@wv.gov

RE: Comments on Public Water Systems 64 CSR 3

Ms. Goldberg and Mr. Toomey,

West Virginia Rivers Coalition submits these comments on the proposed revisions to 64 CSR 3 in collaboration with the organizations listed on the signatory page of this document. Each signatory has a vested interest in the quality of West Virginia's public water supplies, and believes that strengthening measures to protect source water are critical to the conservation of our water resources, protection of public health and availability of economic development opportunities in the state. The January 9 contamination of the Charleston water supply was a clear example of how failure to put the best source water protections in place poses a serious threat to public health and economic security.

We appreciate the importance of the Bureau for Public Health's (BPH's) proposed changes to 64 CSR 3. This rule provides instructions for public water utilities that must now update or complete a source water protection plan, as required by Senate Bill 373.

In the fiscal note, we see that BPH estimates that 124 water utility systems will need to comply with these new rules. These rules will help protect the quality of public drinking water in all corners of the state.

Many sections of the rule mirror the exact language in SB 373, which we support. SB 373 was very explicit about the required contents of source water protection plans, and these requirements in most cases did not require additional clarification in the rulemaking process.

Support for utilities that go above and beyond these minimum requirements

We applaud BPH's recognition that water utilities may go above and beyond the minimum requirements in this rule:

"The requirements specified in this rule are minimum requirements and shall not prevent a public water utility or a public water system from taking additional steps to protect its wells, springs, wellfields, or surface water intakes." (§14.2)

We hope that BPH will actively support utilities that decide to go above and beyond these requirements, as the agency's time and resources permit. For example, we would expect BPH to hold a public hearing on a source water protection plan in a timely manner, even if the plan is completed substantially ahead of the required submission date. We would also expect BPH to promptly provide requested data and information to utilities that are already developing, or that will soon develop, plans.

Public engagement is critical in the source water protection process

One change from SB 373 to the rule that is of concern, however, is in §14.5 of the proposed rule. SB 373 reads as follows:

"Every effort shall be made to inform and engage the public, local governments, local emergency planners, local health departments and affected residents at all levels of the development of the protection plan." (§16-1-9c, Emphasis added)

The contrasts with the proposed rule:

"Efforts shall be made by the water utility to inform and engage the public, local governments, local emergency planners, local health departments and affected residents at all levels of the development of the protection plan." (§14.5, Emphasis added)

This apparent backtracking in the level of required public engagement is troubling. By using the phrase "Every effort" in SB 373, the Legislature made it clear that public engagement is to be a critical component of the planning process. We urge you to reflect the intent of the Legislature on this point and revise the rule to read "Every effort shall be made by the water utility..." and to include in the rule enumeration of some examples of efforts to inform and engage the public. A few examples of such actions could include, but are not limited to: public meetings, notices inserted in customer billing statements, radio/television public service announcements and social media communications.

While public involvement will be helpful in developing many components of the source water protection plans, it is perhaps most critical in development of management plans. In fact, in SB 373 and 64 CSR 3 include the exact same text regarding management plans:

"A management plan that identifies specific activities that will be pursued by the public water utility, in cooperation and in concert with the bureau for public health, local health departments, local emergency responders, local emergency planning committee, and other state, county or local agencies and organizations to protect its source water supply from contamination, including but not limited to notification to and coordination with state and local government agencies whenever the use of its water supply is inadvisable or impaired, to conduct periodic surveys of the system, the adoption of best management practices, the purchase of property or development rights, conducting public education or the adoption of

other management techniques recommended by the commissioner or included in the source water protection plan” (SB 373 §16-1-9c(1), 64 CSR 3 §14.6.j)

Engaging a broad range of local stakeholders, including the general public, is essential for management plans to be tailored to local conditions. Site-specific management plans developed with broad participation are more likely to be implemented. And implementation is key if these plans are to succeed in protecting our source water from contamination.

We are interested in collaborating with BPH and public water utilities to educate the general public about their role in the source water protection planning and implementation process. After the contamination event that impacted the drinking water of over 16% of the state’s population, and with the promulgation of this rule, there is a renewed opportunity for alliance building between public water utilities and their customers. It should not go unnoted that the chemical leak at Freedom Industries was first reported by a citizen. Regulators cannot be everywhere, all the time, monitoring contamination threats. Citizens are. As in the case of Freedom Industries, they often live near or travel by potential contaminant sources. Informed citizens are a valuable ally in source water protection. Involving the public in source water protection efforts helps minimize risk for contamination events. Taking a stance to involve the public in every phase of planning and implementation also instills consumer confidence that steps are being taken by the utility to deliver safe drinking water its customers.

Schedule for plan submission

While SB 373 provides a single July 1, 2016 deadline for the submission of all source water protection plans, we appreciate the burden that BPH would face if more than 100 plans were submitted at the same time. The agency is required to hold public hearing and review each plan, and it would simply be impossible to do so for so many plans at the same time.

We therefore support BPH’s effort to stagger the submission of these plans from July 1, 2015 through July 1, 2016 so that the agency can hold watershed-based public hearings from October 2015 through December 2016.

Even the agency’s first proposed deadline, July 1, 2015, provides more than a year since passage of SB 373 for a utility to develop its plan.

Source Water Protection Grant Program

The fiscal note states that \$672,000 will be available in FY15 from the Source Water Protection Grant Program to help water utilities develop source water protection plans. This funding will be very important—particularly for smaller systems that may not have the resources to develop plans using current revenue streams.

We note, however, that the fiscal note does not include any grants in FY16. We suggest that additional grant funds be made available in FY16 to help public water utilities that may not have completed their work in FY15.

The fiscal note

The fiscal note estimates a cost of approximately \$1.5 million in FY15, which appears to include the \$672,000 in grant funds to water utilities.

However, the amount of funding needed in FY16 and FY17 is not clear. The fiscal note summary describes approximately \$375,000 of funding needed in FY16 and again in FY17 for employee salaries and benefits and for expenses. In an article in the Charleston Daily Mail from June 18, a BPH employee estimated the costs in FY16 and FY17 to be \$1.2 million and \$1 million, respectively, although she noted that these costs are estimates. We request clarification of this apparent discrepancy.

BPH is taking on significant additional responsibilities—not only in FY15, but also in future years. Its responsibilities will grow as more and more utilities become engaged in the planning process and submit plans to BPH for review, public hearings, and approval. It is crucial that BPH be funded sufficiently to oversee this process so that detailed, realistic, site-specific source water protection plans are written that have broad community support and that are likely to be implemented.

Thank you very much for considering these comments.

Sincerely,

Angie Rosser

West Virginia Rivers Coalition



Julie Archer

West Virginia Citizen Action Group

Dianne Bady

Ohio Valley Environmental Coalition

Don Garvin

West Virginia Environmental Council

Helen Gibbins

West Virginia League of Women Voters

Dr. James Van Gundy

Aquatic Ecologist

Cindy Rank

West Virginia Highlands Conservancy

Amy Vernon-Jones

Appalachian Mountain Advocates

Brent Walls

Upper Potomac Riverkeeper

Goldberg, Ann A

From: John Doyle <jdoyle952@gmail.com>
Sent: Wednesday, July 23, 2014 10:51 AM
To: Goldberg, Ann A; Toomey, William J
Subject: please protect the water

Ms. Goldberg, Mr. Toomey:

I urge you to diligently pursue the following points in development and implementation of a comprehensive water protection plan for the state. Water is life. Jobs, jobs, jobs are no good, no good, no good without pure water, pure water, pure water.

SB 373 is clear in it's requirement for public engagement in the process. Please include language requiring "every effort" to be made to inform and include the public in all phases of the process.

Include provisions that reward utilities for going above and beyond minimum legal standards for water quality and stewardship.

Strive to ensure funding adequate for complete quality oversight of the entire process and product. Please be sure that the water protection plans are:

detailed
realistic
site specific
publicly supported
actually carried out

thank you sincerely,

John Doyle
1527 Hampton Rd.
Charleston, WV 25314
Phone: 304-345-6096

Goldberg, Ann A

From: Ellen Mueller <ellen.m.mueller@gmail.com>
Sent: Thursday, July 24, 2014 9:52 AM
To: Goldberg, Ann A; Toomey, William J
Subject: Strengthen Protections for Our Water Supplies

1. Public engagement is critical in the source water protection process – in SB 373, the Legislature made it clear that public engagement is to be a critical component of the planning process. The rule needs to be explicit that “every effort” shall be made to inform and engage the public at all levels of the development and implementation of the protection plan.

2. Support utilities that go above and beyond minimum requirements – we support BPH's encouragement to utilities taking additional steps to protect its water supply.

3. Sufficiently fund the new requirements - It is crucial that BPH be funded sufficiently to oversee this process so that detailed, realistic, site-specific source water protection plans are written that have broad community support and that are likely to be implemented.

Goldberg, Ann A

From: sara cowgill <sarabcowgill@gmail.com>
Sent: Thursday, July 24, 2014 12:28 PM
To: Goldberg, Ann A; Toomey, William J
Subject: LIKE Your Life Depends on IT

I am Seventh generation West Virginian on my mom's side and eight on my dad's and I am upset about the water situation in many aspects. One thing that made me mad is that the city alarm didn't go off when the water wasn't fit to use— I was alerted by text from a friend; no official warning ever occurred for me. I got my news from online social networks— from a computer, via suddenlink— EXPENSIVE and optional communication.

Another thing that still aggravates me is that the water company isn't local. When I called, the call bank wasn't even in state! How the heck do you make someone care who isn't even here? ha ha ha And Why didn't they start changing out filters? and what was with flushing all over the street? so now that chemical is all over everything? and back into the river? oh my, please make it stop!!

Some people want testing— animal testing? no. please don't do this— test the chemicals on the families of the people who make these toxic substances, not on my family, and the people who invest in these companies, not on the poor. I don't really want to test these chemicals on any people, or on any animals, not even on plants. I'm not even sure you should test them on stem cells.

Actually, I believe people are getting uninterested in the chemical industry overall: the war machine, the plastic, the toxins in everything, including mother's milk, it's sickening.

We need solutions. We need water. Clean safe potable water for drinking, and clean safe rivers for swimming and recreation and clean rain, and OH MY!!! We are in a temperate rain forest here in West Virginia! We need to safeguard our water as a National Treasure! We have rivers flowing in every cardinal direction and we need to realize the importance of our watersheds not only for ourselves, but everyone and everything downstream, including the Gulf and the Gulf Stream. We must protect our land, and our people— the land and water is WHO WE ARE.

RESPECT the Water
THANK the Water
LOVE the Water

do not allow anyone or any corporation to kill, poison, destroy, bury or contaminate the lifeblood of our body, the water of our land, the essence of our soul is in this water.

Protect Water Like YOUR LIFE DEPENDS ON IT

1. Public engagement is critical in the source water protection process – in SB 373, the Legislature made it clear that public engagement is to be a critical component of the planning process. The rule needs to be explicit that “every effort” shall be made to inform and engage the public at all levels of the development and implementation of the protection plan.
2. Support utilities that go above and beyond minimum requirements – we support BPH's encouragement to utilities taking additional steps to protect its water supply.
3. Sufficiently fund the new requirements - It is crucial that BPH be funded sufficiently to oversee this process so that detailed, realistic, site-specific source water protection plans are written that have broad community support and that are likely to be implemented.

Sara Cowgill
25311 Charleston, WV

PS perhaps you need to extend the comment period, because I don't think people have been properly informed about what you are doing, or what decisions are being made, and actually, I don't even know, really, what you are doing or thinking about— I just know the water got poisoned and it's still not right, and the chemical company got away with it and they are jerks, drug addicts and just bought a brand new house with cash, and the water company doesn't care and billed people for bad water which is insane, and we need to take that company out of Charleston, and out of West Virginia and declare imminent domain and establish our own water companies and make more, with different sources and keep all chemical storage at least 500 yards from the bank of the river, with spill catch big enough to catch the spill, and if the DEP isn't equipped to succeed, then we need to dispense with it, or empower it. I guess there is a lot of work to do and not a real clear way to move in this muddle. What do you need from me?

I want clean water— what do you need for me to do to empower you to get me clean water?? Or WHO IS responsible for getting clean water to my apartment, because if Kanawha County is going to take children away from parents because I had spring water and no running" water, then you damn well better know who is responsible for ensuring it gets there clean and fire them because they FAILED and tell me what is happening to FIX THIS??



West Virginia Rural Water Association

100 Young Street • Scott Depot, WV 25560-7839 • 304/201-1689

July 22, 2014

Mrs. Ann Goldberg, Director
Public Health Regulations
350 Capitol Street, Room 702
Charleston, West Virginia 25301

Mr. William Toomey, Manager
Office of Environmental Health Service
Source Water Assessment and Protection
350 Capitol Street, Room 313
Charleston, West Virginia 25301

RECEIVED

JUL 24 2014

**COMMISSIONER'S OFFICE
BUREAU FOR PUBLIC HEALTH**

Dear Mrs. Goldberg and Mr. Toomey:

The West Virginia Rural Water Association (Association) has reviewed the Bureau's proposed Legislative Rules under Title 64, Series 3, Public Water Systems and offers these comments.

The Association appreciates the collegial atmosphere that the Bureau engaged in as it was promulgating these rules. The time spent in the Work Group in Flatwoods was well spent by all parties. Comments from our membership were well received and were incorporated into the proposed rules. Such collaborations can only benefit the citizens of West Virginia as we all seek to implement the provisions of Senate Bill 373. We have no proposed changes to the proposed Legislative Rules (Rules).

The Association is, however, concerned that the Fiscal Note for Proposed Rules contains costs for Fiscal Year 2015 and no costs for either Fiscal Year 2016 or, apparently, for the following fiscal years. There is a memorandum that states that "Additional ongoing costs may be incurred associated with the mandatory public hearings and review of updated SWPP submissions. It is speculative as to the amounts required to cover these costs as full implementation of the rule will take a number of years."

Source water protection plans are due on or before July 1, 2016. Water utilities will incur the costs of updating or, in some cases, preparing their source water protection plans to comply with this deadline with no assurance that the Department of Health and Human Resources (Department) will have the financial resources available to conduct hearings throughout the state and to promptly review the plans. The Association believes that the Department should include a completed Fiscal Note for the next two Fiscal Years as a part of its proposed Rule.

Thank you for the opportunity to provide these comments. If you have any questions, please don't hesitate to contact me.

Sincerely,



Amy L. Swann, Executive Director

Cc: Mayor Alan Haught, President, West Virginia Rural Water Association
Michael McNulty, Chairman, Legislative Committee, West Virginia Rural Water Association
Tim Stranko, General Counsel, West Virginia Rural Water Association
Walter Ivey, P.E., Office of Environmental Health Services, Bureau for Public Health, Department of Health and Human Resources

Goldberg, Ann A

From: danotbob@gmail.com on behalf of Dan Taylor <dan@ohvec.org>
Sent: Friday, July 25, 2014 10:48 AM
To: Goldberg, Ann A; Toomey, William J
Subject: SB 373 Public Water Systems Rule comments

I support the following recommendations:

- 1. Public engagement is critical in the source water protection process** – in SB 373, the Legislature made it clear that public engagement is to be a critical component of the planning process. The rule needs to be explicit that “every effort” shall be made to inform and engage the public at all levels of the development and implementation of the protection plan.
- 2. Support utilities that go above and beyond minimum requirements** – we support BPH’s encouragement to utilities taking additional steps to protect its water supply.
- 3. Sufficiently fund the new requirements** - It is crucial that BPH be funded sufficiently to oversee this process so that detailed, realistic, site-specific source water protection plans are written that have broad community support and that are likely to be implemented.

Thanks,

Dan Taylor
1133 10th St. Apt.4
Huntington, WV 25701

Goldberg, Ann A

From: Marc Harshman <marcharshman@hotmail.com>
Sent: Friday, July 25, 2014 8:21 PM
To: Goldberg, Ann A
Subject: re. SB 373

7.25.14

Ann A. Goldberg, Director
Public Health Regulations

Dear Ann A. Goldberg,

I am writing in regards to the Bureau of Public Health rule implementing the new source water protection plan requirements in SB 373. I wish to urge that it be seen as a priority to inform and engage the public at all levels of the development and implementation of the plan. Further, special incentives should be provided for utility firms that show good faith in going beyond the minimum requirements. And lastly, and perhaps most importantly, it must be insured the BPH be adequately funded to oversee this process.

Thanks very much for your time and consideration.

Sincerely, Marc Harshman

Marc Harshman
43 Romney Road
Wheeling, WV 26003

Goldberg, Ann A

From: CAROL SHEFFIELD <deepwoodell@wildblue.net>
Sent: Friday, July 25, 2014 9:27 PM
To: Toomey, William J
Subject: SB373

I write to urge you to be as transparent as possible during this process of protecting our waterways and supply sources. After the recent Charleston-area water disaster, where incomplete information and competing opinions only served to confuse, the public became distrustful and apprehensive. Our water supply is a crucial part of everyday life and consumers need to feel part of the solution.

As this effort moves forward, I feel it's only right to encourage and reward utilities who choose to go "above and beyond" minimum requirements to protect our water. Consumers have the right to expect the best possible and not simply the least we can get away with...this creates an atmosphere of trust and reliability for our essential utilities.

With that in mind, I feel it is mandatory that the BPH be funded at a level commensurate with the scope and seriousness of the mission. We can't expect to get the best results without the proper funding support. We expect a serious and successful effort...and deserve nothing less.

Thank you for your time and interest.

Carol Sheffield, Buckhannon

Goldberg, Ann A

From: Katey Lauer <lauerkj@gmail.com>
Sent: Sunday, July 27, 2014 4:28 PM
To: Goldberg, Ann A; Toomey, William J
Subject: Comments on the Public Water Systems Rule

Thank you for your consideration:

1. Public engagement is critical in the source waterprotection process – in SB 373, the Legislature made it clear that public engagement is to be a critical component of the planning process. The rule needs to be explicit that “every effort” shall be made to inform and engage the public at all levels of the development and implementation of the protection plan.

2. Support utilities that go above and beyond minimum requirements – we support BPH's encouragement to utilities taking additional steps to protect its water supply.

3. Sufficiently fund the new requirements - It is crucial that BPH be funded sufficiently to oversee this process so that detailed, realistic, site-specific source water protection plans are written that have broad community support and that are likely to be implemented.

Katey Lauer



July 24, 2014

RECEIVED

JUL 28 2014

COMMISSIONER'S OFFICE
BUREAU FOR PUBLIC HEALTH

Mrs. Ann Goldberg, Director
Public Health Regulations
350 Capitol Street, Room 702
Charleston, West Virginia 25301

Mr. William Toomey, Manager
Office of Environmental Health Service
Source Water Assessment and Protection
350 Capitol Street, Room 313
Charleston, West Virginia 25301

Dear Mrs. Goldberg and Mr. Toomey:

I write this on behalf of the Water Utility Council of the West Virginia Section of the American Water Works Association. The Water Utility Council has reviewed the Bureau's proposed Legislative Rules under Title 64, Series 3, Public Water Systems and offers these comments.

AWWA appreciates the collegial atmosphere that the Bureau engaged in as it was promulgating these rules. The time spent in the Work Group in Flatwoods was well spent by all parties. Comments from participants were well received and were incorporated into the proposed rules. Such collaborations can only benefit the citizens of West Virginia as we all seek to implement the provisions of Senate Bill 373.

Reflecting that productive collaboration, we have only three proposed changes to the proposed Legislative Rules (Rules). These suggestions are intended to clarify that DHHR/BPH is the state agency with primary responsibility for protection of the public health and actively coordinating with public water systems to that end. This clarity is critical to the success of the source water protection program.

To that important end, the following sub-sections should be added:

14.6.h.4.A Upon a report to any State agency of such a chemical spill, release, or related emergency event, DHHR / BPH shall immediately notify the affected Public Water System(s) of said event and, for the duration of said event, shall provide updates to the affected Public Water System(s) immediately as new information becomes available to the State. In such events, the DHHR / BPH shall coordinate with other State agencies to promptly investigate the cause, extent, and nature of the chemical spill, release, or related emergency event.

14.6.k.1 Upon a report to any State agency of such a chemical spill, release, or related emergency event, DHHR / BPH shall immediately notify the affected Public Water System(s) of said event and, for the duration of said event, shall provide updates to the affected Public Water System(s) immediately as new information becomes available to the State. In such events, the DHHR / BPH shall coordinate with other State agencies to promptly investigate the cause, extent, and nature of the chemical spill, release, or related emergency event.

14.10 The Public Water Utility has no duty or obligation to perform toxilological study(ies) or any other analysis(es) to interpret, complete, compliment, or supplement the information presented in the material safety data sheets (MSDS's) that are received by the Public Water Utility from WVDEP or from third party operators/owners. WVDHHR/BPH shall receive and resolve any requests for additional or interpretive information regarding a MSDS.

The above Rule 14.10 should be inserted following Rule 14.9. Rules 14.10, 14.11, and 14.2 would then be re-numbered 14.11, 14.12, and 14.13 respectively.

We are, however, concerned that the Fiscal Note for Proposed Rules contains costs for Fiscal Year 2015 and no costs for either Fiscal Year 2016 or, apparently, for the following fiscal years. There is a memorandum that states that "Additional ongoing costs may be incurred associated with the mandatory public hearings and review of updated SWPP submissions. It is speculative as to the amounts required to cover these costs as full implementation of the rule will take a number of years."

Source water protection plans are due on or before July 1, 2016. Water utilities will incur the costs of updating or, in some cases, preparing their source water protection plans to comply with this deadline with no assurance that the Department of Health and Human Resources (Department) will have the financial resources available to conduct hearings throughout the state and to promptly review the plans. The Association believes that the Department should include a completed Fiscal Note for the next two Fiscal Years as a part of its proposed Rule.

A second concern related to the Fiscal Notes is that, with regard to grant funding assistance to water utilities for developing and updating source water protection plans, the language of the notes potentially conflicts with the subject Rule. The notes say that funds may be made available "to an applicant water utility systems(sic) upon a showing of need for such funds...". Section 15.2 of the subject Rule says grant funds will be awarded according to "where there is the highest probability of contamination...". In order to prevent a misinterpretation that the basis of award might include an assessment of the financial condition of the water utility, we respectfully suggest that the Fiscal Note be amended to reflect instead the language from the Rule that is quoted in this comment.

Thank you for the opportunity to provide these comments. If you have any questions, please don't hesitate to contact me.

Respectfully,

**WATER UTILITY COUNCIL
WV SECTION - AWWA**

A handwritten signature in black ink, appearing to read 'T. Ball', with a stylized flourish at the end.

Timothy L. Ball, P.E.
Chairman



RECEIVED

JUL 28 2014

COMMISSIONER'S OFFICE
BUREAU FOR PUBLIC HEALTH

July 23, 2014

Ann A Goldberg, Director Public Health Regulations
350 Capitol Street, Rm 702
Charleston, WV 25301

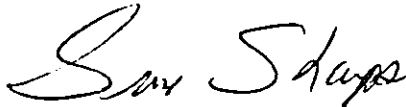
On behalf of the West Virginia Dental Hygienists' Association, you are respectfully requested to support the recent revisions to Proposed Rule (64CSR3) pertaining to Community Water Fluoridation. One of the most critical revisions is the public notice requirement which respects democratic principles by ensuring that West Virginians are made aware of potential decisions affecting their health and well-being long before they are finalized.

The revisions are a smart way to address a growing concern. Within the past year, roughly half a dozen communities in our state have either taken votes on or engaged in lengthy discussion about ceasing community water fluoridation based largely on budgetary reasons. These communities have not provided ample notice to their residents of the potential ceasing of fluoridation. This has made it difficult — if not impossible — for dental hygienists, dentists, physicians and other community health leaders to weigh in and share important information. It has kept many local residents in the dark, so they are unaware of how ending fluoridation could affect their health or that of their families.

As you are well aware, the Centers for Disease Control and Prevention named the fluoridation of drinking water one of the ten great public health achievements of the 20th century. Moreover, the U.S. Department of Health and Human Services (HHS) has stated that "One of water fluoridation's biggest advantages is that it benefits all residents of a community—at home, work, school, or play." In addition, the Centers for Disease Control and Prevention report that fluoridated water reduces the rate of tooth decay by approximately 25 percent. It is only appropriate that a community that seeks to end fluoridation be expected to submit a proposal to the Commissioner outlining its alternative approach for protecting local residents from the negative impacts of increased risk of cavities. The Commissioner's review of this proposal can ensure that the community has given sufficient consideration to the impact of ceasing fluoridation.

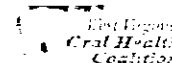
In sum, community water fluoridation is a safe and cost-effective measure that benefits all West Virginians regardless of either their health or socio-economic status. Please support the recent revisions to Proposed Rule (64CSR3) pertaining to Community Water Fluoridation to safeguard this important public health measure. As a Public Health Registered Dental Hygienist (RDH), an oral healthcare advocate, and President of the West Virginia Dental Hygienists' Association, you may contact me at any time to discuss this subject further by utilizing the contact information below.

Respectfully Yours,
Gina

A handwritten signature in cursive script that reads "Gina Sharps".

Gina Sharps, MPH, RDH
President-West Virginia Dental Hygienists' Association
304-276-0572(C)
sharpsg@marshall.edu

West Virginia Oral Health Coalition
PO Box 2773, Charleston, WV 25330
304-610-6512
wvoralhealthcoalition@gmail.com



JULY 30, 2014

Ann A Goldberg, Director Public Health Regulations
350 Capitol Street, Rm 702 Charleston, WV 25301

Dear Ann Goldberg,

According to recent surveillance data, West Virginia children and adults have elevated rates of tooth decay. Oral infections resulting from untreated tooth decay not only affects the mouth, but has been associated with diabetes, cardiovascular disease, adverse birth outcomes and even death. With West Virginia's high rates of tooth decay, it is important to consider all measures of avoidance and reduction of this preventable condition.

The West Virginia Oral Health Coalition is in support of the recent revisions to Proposed Rule (64CSR3) pertaining to Community Water Fluoridation. The CDC recognizes community water fluoridation as a safe and cost effective method of preventing tooth decay. This public notice requirement respects democratic principles by ensuring that West Virginians are made aware of potential decisions affecting their health and well-being long before they are finalized.

Sincere regards,

Deonna Williams, MS

WEST VIRGINIA ORAL HEALTH COALITION COORDINATOR

Goldberg, Ann A

From: Jim Hatfield <hatfield.jch@gmail.com>
Sent: Wednesday, July 30, 2014 1:47 PM
To: Goldberg, Ann A
Subject: comments on new SWPP
Attachments: swpp comments 140730.docx

Ann Goldberg,

Attached are comments regarding the new Source Water Protection Plan.

Can you acknowledge receipt of this email and attachment so I can be sure you received it by tomorrow's deadline?

Thanks,
Jim Hatfield

Comments on: DHIIR - Bureau for Public Health (BPH) rule implementing the new source water protection plan requirements in SB 373.

Section 14.2

This is an excellent component of the plan.

Add language to the effect that additional protective steps are "anticipated and encouraged."

PROPOSAL FOR NEW SECTION... 14.2.b.

The BPH should collect and publish best practices from the State's utilities. Specific examples in each of the SWPP categories in which utilities have chosen to exceed the minimum requirements should be documented and will help stimulate continuous improvement throughout the State's public water system.

Section 14.5

Another excellent component of the plan.

Add language to the effect that "every effort" shall be made to inform and engage the public at all levels of the development and implementation of the protection plan.

Sections 14.6.a-i

These sections require studies of unaccounted for water, alternate sources, potential contamination sources, and chemical monitoring. As it stands, a utility will satisfy large portions of the SWPP by conducting feasibility studies. By themselves, these do not satisfy the intent of the SWPP. What are the steps that will require implementation of the SWPP?

Section 14.6.g

This guidance is necessary and crucial. For example, the Elk River utility currently reports unaccounted for water in excess of 30% which directly impacts its ability deal with chemical spills and can even indicate management plans that run counter to the spirit of a credible SWPP.

Section 14.6.h.3

By their nature, water crises are unexpected, unannounced, and accompanied by various degrees of confusion, anxiety, and stress that challenge even the best emergency response plans. Public safety, in its extreme including the protection from threats to human health and life by toxic, water-borne contaminants, trumps the confidentiality of stored chemicals in the zone of critical concern. Every effort must be made to avoid or minimize the difficulty of accessing confidential chemical information in crisis situations. It should also be recognized that information required to protect the public and respond effectively to the chemical spill of a proprietary and confidential liquid does not require the trade name or chemical identification of the material. It does require key elements of its toxicological, chemical, and physical profile. This profile, however, is only broadly descriptive of the confidential material and can protect its identity while providing emergency personnel with the information they need in a crisis scenario. Unannounced practice drills that present a variety of unexpected situations should be practiced to guarantee rapid access and use of crucial chemical information.

PROPOSAL FOR A NEW SECTION...

Critical information found in a SWPP and which periodically must be updated is also required in an Emergency Response Plan (ERP). ERPs should be required and detailed in SWPPs.

Section 14.6.h.5

There is no need to leave this issue to the discretion of the water utility. The wording should be changed to, "Any public water utility MUST (not "may") identify additional potential sources..." In addition, this requirement must be extended to other stakeholders including government agencies, businesses, private

citizens and others. Also, 14.9 should be referenced in this section to emphasize the possibility of yet another input source.

Section 14.6.i.5

Instead of reading "... technologically or economically feasible..." it should read "... technologically feasible..." The "economic feasibility" is already and properly covered in the existing phrase "... an analysis of the comparative costs..."

Section 14.6.j

All aspects of the management plan, except select portions deemed to represent a security risk, should be available to the public.

Section 14.6.m

Understanding the technical and economic feasibility of early warning monitoring system is critical to improved public water systems throughout the State. Whenever possible, it must include a realistic cost/benefit analysis which compares the cost of a monitoring system to the economic impact of a contaminated public water system on the communities it serves, e.g., as happened in the Kanawha Valley region on January 9, 2014. To increase public trust and conform to 14.5, the concerned public, i.e., non-utility and non-government personnel, should be allowed and encouraged to participate in this process.

Section 14.6.n

The skill sets of a West Virginia Registered Professional Engineer (PE) and the CEO of a privately owned water utility or the Board Chairman or other presiding officer of a publicly owned water utility cannot be assumed to overlap and likely do not. The skills required to assess the merits of a Source Water Protection Plan are technical, not managerial, in nature. Furthermore, to increase public trust in the SWPP and to conform to 14.5, the integrity and technical soundness of the SWPP should be evaluated by a West Virginia Registered Professional Engineer (PE) unaffiliated in the past or present with the private or public utility involved. This requirement should not be deemed onerous by the utility but, rather, an opportunity to display the objective soundness and professionally recognized credibility of its SWPP. Especially in light of 14.8.c, it is essential that the SWPP that legally obligates a specific utility be vetted by a PE unaffiliated in the past or present with that utility.

Section 14.8.b

Reference should be made to 14.5 to underscore the importance of public engagement and input.

State the purpose of the public hearing in this section.

Add a mechanism whereby the public can call for a public hearing focusing on their SWPP.

CALL FOR CLEAR LANGUAGE...

In the vicinity of 14.6.n and 14.7, language like "a privately owned public water utility's public water system" is conceivable and confusing. The language that describes these various categorizations should be clarified, simplified, and made consistent throughout the SWPP to encourage widespread public understanding and participation as called for in 14.2.

FUND THIS NEW INITIATIVE...

The BPH must have additional funds to make this new process, which enlists broad community support and involvement, viable.

Jim Hatfield

hatfield.jch@gmail.com

304 727 6138



PARKERSBURG UTILITY BOARD

125 Nineteenth Street
Parkersburg, West Virginia 26101-2596

Telephone 304-424-8535
Fax 304-485-3802

July 29, 2014

RECEIVED

JUL 30 2014

COMMISSIONER'S OFFICE
BUREAU FOR PUBLIC HEALTH

Mrs. Ann Goldberg, Director
Public Health Regulations
350 Capitol Street, Room 702
Charleston, West Virginia 25301

Mr. William Toomey, Manager
Office of Environmental Health Service
Source Water Assessment and Protection
350 Capitol Street, Room 313
Charleston, West Virginia 25301

Re: Legislative Rules – Title 64, Series 3 Public Water Systems

Dear Mrs. Goldberg and Mr. Toomey:

The Parkersburg Utility Board (PUB) has reviewed the Bureau's proposed Legislative Rules under Title 64, Series 3, Public Water Systems and offers these comments.

PUB appreciates the collegial atmosphere that the Bureau engaged in as it was promulgating these rules. The time spent in the Work Group in Flatwoods was well spent by all parties. Comments from participants were well received and were incorporated into the proposed rules. Such collaborations can only benefit the citizens of West Virginia as we all seek to implement the provisions of Senate Bill 373.

Reflecting that productive collaboration, we have only three proposed changes to the proposed Legislative Rules (Rules). These suggestions are intended to clarify that DHHR/BPH is the state agency with primary responsibility for protection of the public health and actively coordinating with public water systems to that end. This clarity is critical to the success of the source water protection program.

To that important end, the following sub-sections should be added:

14.6.h.4.A Upon a report to any State agency of such a chemical spill, release, or related emergency event, DHHR / BPH shall immediately notify the affected Public Water System(s) of said event and, for the duration of said event, shall provide updates to the affected Public Water System(s) immediately as new information becomes available to the State. In such events, the DHHR / BPH shall coordinate with other State agencies to promptly investigate the cause, extent, and nature of the chemical spill, release, or related emergency event.

14.6.k.1 Upon a report to any State agency of such a chemical spill, release, or related emergency event, DHHR / BPH shall immediately notify the affected Public Water System(s) of said event and, for the duration of said event, shall provide updates to the affected Public Water System(s) immediately as new information becomes available to the State. In such events, the DHHR / BPH shall coordinate with other State agencies to promptly investigate the cause, extent, and nature of the chemical spill, release, or related emergency event.

14.10 The Public Water Utility has no duty or obligation to perform toxilogical study(ies) or any other analysis(es) to interpret, complete, compliment, or supplement the information presented in the material safety data sheets (MSDS's) that are received by the Public Water Utility from WVDEP or from third party operators/owners. WVDHHR/BPH shall receive and resolve any requests for additional or interpretive information regarding a MSDS.

The above Rule 14.10 should be inserted following Rule 14.9. Rules 14.10, 14.11, and 14.2 would then be re-numbered 14.11, 14.12, and 14.13 respectively.

PUB is, however, concerned that the Fiscal Note for Proposed Rules contains costs for Fiscal Year 2015 and no costs for either Fiscal Year 2016 or, apparently, for the following fiscal years. There is a memorandum that states that "Additional ongoing costs may be incurred associated with the mandatory public hearings and review of updated SWPP submissions. It is speculative as to the amounts required to cover these costs as full implementation of the rule will take a number of years."

Legislative Rules – Title 64, Series 3 Public Water Systems
July 29, 2014
Page 3 of 3

Source water protection plans are due on or before July 1, 2016. Water utilities will incur the costs of updating or, in some cases, preparing their source water protection plans to comply with this deadline with no assurance that the Department of Health and Human Resources (Department) will have the financial resources available to conduct hearings throughout the state and to promptly review the plans. PUB believes that the Department should include a completed Fiscal Note for the next two Fiscal Years as a part of its proposed Rule.

A second concern related to the Fiscal Notes is that, with regard to grant funding assistance to water utilities for developing and updating source water protection plans, the language of the notes potentially conflicts with the subject Rule. The notes say that funds may be made available “to an applicant water utility systems(sic) upon a showing of need for such funds...”. Section 15.2 of the subject Rule says grant funds will be awarded according to “where there is the highest probability of contamination...”. In order to prevent a misinterpretation that the basis of award might include an assessment of the financial condition of the water utility, we respectfully suggest that the Fiscal Note be amended to reflect instead the language from the Rule that is quoted in this comment.

Thank you for the opportunity to provide these comments. If you have any questions, please don't hesitate to contact me.

Respectfully,
Parkersburg Utility Board



Eric Bennett
General Manager

cc:
Parkersburg Utility Board
George Zivkovich, Counsel
Eric Bumgardner, Assistant Manager

Carli Mareneck
1394 Sweet Springs Villy
Sweet Springs, WV 24941

7/26/14

RECEIVED

JUL 30 2014

COMMISSIONER'S OFFICE
BUREAU FOR PUBLIC HEALTH

Ann A. Goldberg, Director
Public Health Regulations
350 Capitol St. Rm 702
Charleston, WV 25301

Dear Ms. Goldberg,

This letter is written as a public comment on SB373. Please do everything in your power to see that West Virginia's waters are protected. Utilities must be pressured to go beyond the minimal safety requirements. Requirements achieve nothing unless they are properly funded and enforced. Citizens should be engaged in meaningful ways in both the development and application of the protection plan.

For far too long corporations have polluted West Virginia's pristine waters. Often, they prefer paying a fine to enforcing protective practices to begin with. The structure puts a burden on citizens who cannot afford preliminary water testing nor prove that the illnesses that plague their families, from skin rashes to organ failures and cancers, are caused by polluting industries. It is an unfair, unjust burden on innocent, powerless individuals.

Hydrofracking is a perfect example of corporations wreaking havoc on West Virginia water supplies with no accountability. Physicians attempt to treat patients without the right to gain access to information about what chemicals are being blasted into the wells. West Virginians lose their health and their properties become worthless. Why is this allowed to happen?!

The toxic spill in Charleston represents the tip of an iceberg. I am personally weary of how little is done to prevent water pollution in our beautiful state.

Sincerely,

Carli Mareneck
cmareneck@yahoo.com



July 27, 2014

Ann A Goldberg, Director Public Health Regulations
350 Capitol Street, Rm 702
Charleston, WV 25301

On behalf of Marshall University Community and School Oral Health Team, you are respectfully requested to support the recent revisions to Proposed Rule (64CSR3) pertaining to Community Water Fluoridation.

One of the most important revisions to the rule is the public notice requirement which respects democratic principles by ensuring that West Virginians are made aware of potential decisions affecting their health and well-being long before they are finalized. Currently, the public at large is often unaware of when decisions to end community water fluoridation take place and consequently are unapprised of how ending fluoridation in their respective communities could affect their health or that of their families. The proposed revisions are a democratic means to safeguard the critical public health measure of community water fluoridation.

Within the past year, roughly half a dozen communities in our state have either taken votes on or engaged in lengthy discussion about ceasing community water fluoridation based largely on budgetary reasons. These communities have not provided ample notice to their residents of the potential ceasing of fluoridation. This has made it difficult — if not impossible — for consumers, public health professionals and other community health leaders to weigh in and share important information.

As you are well aware, the Centers for Disease Control and Prevention named the fluoridation of drinking water one of the ten great public health achievements of the 20th century. Moreover, the U.S. Department of Health and Human Services (HHS) has stated that "One of water fluoridation's biggest advantages is that it benefits all residents of a community—at home, work, school, or play." In addition, the Centers for Disease Control and Prevention report that fluoridated water reduces the rate of tooth decay by approximately 25 percent. It is only appropriate that a community that seeks to end fluoridation be expected to submit a proposal to the Commissioner outlining its alternative approach for protecting local residents from the negative impacts of increased risk of cavities. The Commissioner's review of this proposal can ensure that the community has given sufficient consideration to the impact of ceasing fluoridation.

Please support the recent revisions to Proposed Rule (64CSR3) pertaining to Community Water Fluoridation to safeguard this important public health measure.

Respectfully Yours,

Marshall University, Community and School Oral Health Team
www.wvshtac.org

RECEIVED

JUL 30 2014

COMMISSIONER'S OFFICE
BUREAU FOR PUBLIC HEALTH

Goldberg, Ann A

From: John Carson <jcarson@fairmontwv.gov>
Sent: Wednesday, July 30, 2014 3:15 PM
To: Goldberg, Ann A
Subject: FW: Proposed Source Water Protection Plan Draft Rules
Attachments: public water systems 1.pdf; public water systems 2.pdf

From: John Carson [<mailto:jcarson@fairmontwv.gov>]
Sent: Wednesday, July 30, 2014 3:00 PM
To: 'ann.agoldberg@wv.gov'; 'william.j.toomey@wv.gov'
Cc: davidsago@aol.com
Subject: Proposed Source Water Protection Plan Draft Rules

Mrs. Goldberg, Mr. Toomey,

Please find attached a letter from Mr. David C. Sago, Utility Manager for the City of Fairmont concerning the Proposed Source Water Protection Plan Draft Rules Title 64, Series 3, Public Water Systems. If you have any questions or comments feel free to contact Mr. Sago.

Thank you,
John Carson
Senior Engineer
City of Fairmont



CITY OF FAIRMONT WATER DEPARTMENT

Serving Quality Water Since 1892

Mailing Address: P.O. Box 1428 • Fairmont, West Virginia 26555-1428

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Business Office: (304) 366-6232

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Filtration Plant: (304) 366-1461

Fax: (304) 333-2603

July 30, 2014

By Electronic & First Class Mail

Mrs. Ann Goldberg, Director (ann.a.goldberg@wv.gov)
Public Health Regulations
350 Capitol Street, Room 702
Charleston, West Virginia 25301

Mr. William Toomey, Manager (William.J.Toomey@wv.gov)
Office of Environmental Health Service
Source Water Assessment and Protection
350 Capitol Street, Room 313
Charleston, West Virginia 25301

RE: Proposed Source Water Protection Plan Draft Rules
Title 64, Series 3, Public Water Systems

Ann *Bill*
Dear Mrs. Goldberg and Mr. Toomey:

The City of Fairmont Utilities appreciates the opportunity to submit the following comments on the Bureau's proposed Source Water Protection Plan regulations.

Section 3.1.1. We propose the following modification of the definition:

3.1.1. Potential Source of Significant Contamination. (PSSC) – A facility or activity that stores, uses or produces substances or compounds in sufficient quantities with potential for significant contaminating impact if released upstream into the source water of a public water supply.

Section 14.4.a – The Watershed Delineation Area (WSDA) definition appears too broad to me. It requires consideration of the “entire watershed area upstream from a public water utility intake structure up to the boundary of the state borders....” It requires a “general inventory”. I think such a broad survey should only include existing potential sources of significant contamination (PSSC) rather than a “general survey.” DEP should work with water utilities to establish criteria on which to base this evaluation and we think the information required in the initial round of plans should be phased in with PSSC information first and then supplemented thereafter with potential sources of risk as determined by the Director in subsequent guidance.

Section 14.6.g requires water utilities to report on water loss reduction programs if water loss is in excess of 15 percent. We do not believe such a requirement belongs in a source water protection rule.

Section 14.6.h.5 authorizes any public water utility to identify additional PSSC "if it deems those potential sources to be of concern to the integrity of the water supply." I find it unclear what the regulatory implications/consequence are of such a designation.

Section 14.6.i.5 specifies that if one or more of the alternatives set forth in paragraphs 14.6.i.1 through i.4 is determined to be "technologically or economically feasible, the public water utility shall submit an analysis of the comparative costs, risks and benefits of implementing each of the described alternatives." We believe this subsection should be revised to say "is determined to be technologically and economically feasible...."

Section 14.6.k requires an initial notification to the public within 30 minutes of the water utility learning of a spill, release or potential contamination of the public water system poses a potential threat to public health and safety. We believe that 30 minutes is far too short a period of time to make such a determination, craft an appropriate public message and to disseminate that message. This should be revised to require an initial public notice as soon as possible but no later than four hours after the public water utility has notice of such an event.

Finally, we support the comments submitted by the WVAWWA Water Utility Council and the Morgantown Utility Board on the proposed rule.

Thank you for the opportunity to provide these comments. If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'David C. Sago', with a long horizontal flourish extending to the right.

David C. Sago
Utility Manager

DS/ks

Goldberg, Ann A

From: Kirk, Lolita
Sent: Wednesday, July 30, 2014 3:54 PM
To: Goldberg, Ann A
Cc: Law, John D
Subject: Comments for 64CSR3 Public Water systems
Attachments: 2014-07-30 Rule letter.pdf

Ms. Goldberg,
Please see attached comments from Dr. Gupta.

Thank you.



www.kchd.wv.org

KANAWHA-CHARLESTON HEALTH DEPARTMENT

108 Lee Street, East / PO Box 927
Charleston, WV 25323-0927
(304) 344-KCHD (5243)

Rahul Gupta, MD, MPH, FACP
Executive Director/Health Officer

July 30, 2014

Ann A. Goldberg, Director
Public Health Regulations
350 Capitol St., Room 78
Charleston, WV 25031

Sent via email: Ann.A.Goldberg@wv.gov

Dear Ann:

Re: Comments for 64CSR3 Public Water Systems

We propose the following amendments to the proposed rule. Our suggestions are in boldface type.

64-3-12.1 Unless otherwise specified in this rule . . . a public water system shall report to the Commissioner the results of any test, measurement or analysis required to be made by this rule. . . within forty days of the system's receipt of the test, measurement or analysis. **The commissioner shall consult with an advisory committee appointed by the commissioner regarding the report of any test, measurement or analysis required to be made by this rule. The advisory committee shall consist of the commissioner, a full-time health officer from a local health department and a representative from a local emergency ambulance service. Members shall be appointed by the commissioner for a one-year term. The term shall begin with the effective date of this rule. Members shall not receive compensation. Meetings may be held in person or by any other means determined by the commissioner.**

64-3-12.5. A public water system shall report to the Commissioner any proposed long term or permanent changes to their water treatment process such as a change in fluoridation or changes in the chemicals used in the treatment process, in writing at least 60 days prior to the planned date of implementation, to allow for an evaluation of the change in water quality to the consumers. **The commissioner notify in writing within 30 days the local health department in the water system's jurisdiction of the proposed changes.**

6-3-14.3 On or before July 1, 2016, each existing public water utility. . . shall submit to the commissioner an updated or completed source water information plan for each of its public water system plants. . . **The commissioner shall notify the administrator of each local health department of the submission of the updated or completed source water plan.**

6-3-14.6.h.4 In the event of a chemical spill, release, or related emergency, information pertaining to any spill or release of contaminant shall be immediately disseminated to the local health department or health departments within the jurisdiction of the spill with 60

Administration	Clinic	Environmental	Epidemiology & Threat Preparedness	Prevention & Wellness
Phone: 304.348.6494	Phone: 304.348.8080	Phone: 304.348.8050	Phone: 304.348.1088	Phone: 304.348.6493
Fax: 304.348.6821	Fax: 304.346.4756	Fax: 304.348.8054	Fax: 304.384.8149	Fax: 304.348.6821


minutes using an appropriately pre-established communication system, any emergency responders responding to the spill or release, and the general public . . .

6-3-14.8 The commissioner shall review a plan submitted pursuant to this section and provide a copy to the Secretary of the Department of Environmental Protection and the local health officer of the local health department in the water system's jurisdiction. Upon approval, the plan shall be exercised with the local health department and other applicable responders at least annually from the date of approval by the commissioner. A summary of the exercise along with suggestions for improvements shall be submitted to the commissioner by the utility within 60 days of the exercise.

6-3-14.12 The commissioner's authority in reviewing and monitoring compliance with a source water protection plan may be transferred by the bureau to a nationally accredited local board of health. The nationally accredited local board of health is not required to be in the same jurisdiction as the source water protection plan being reviewed and monitored. The transfer shall not be executed until both parties mutually agree upon an adequate method of reimbursement to pay for the cost of the local health department reviewing and monitoring compliance.

Please feel free to contact me if you have any questions.

Sincerely,



Rahul Gupta, MD, MPH, FACP
Executive Director/Health Officer

RG/jl

cc: W. Kent Carper, President, Kanawha County Commission
Danny Jones, Mayor, City of Charleston

**TITLE 64
LEGISLATIVE RULE
BUREAU FOR PUBLIC HEALTH
DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

**SERIES 3
PUBLIC WATER SYSTEMS**

§64-3-1. General.

1.1. Scope. -- This legislative rule establishes State standards and procedures and adopts national drinking water standards for public water systems and public water utilities. It establishes standards for the production and distribution of bottled drinking water, and also adopts federal standards for the certification of laboratories performing analyses of drinking water. This rule should be read in conjunction with W. Va. Code §§16-1-9, ~~and 16-1-9a, 16-1-9c and 16-1-9d~~. The W. Va. Code is available in public libraries and on the Legislature's web page, <http://www.legis.state.wv.us>.

1.2. Authority. -- W. Va. Code §§16-1-4, 16-1-9 ~~and 16-1-9a, 16-1-9c and 16-1-9d~~.

1.3. Filing Date. -- ~~May 2, 2012~~.

1.4. Effective Date. -- ~~May 2, 2012~~.

§64-3-2. Application and Enforcement.

2.1. Application. -- This rule applies to public drinking water systems, public water utilities, to bottled water treatment plants and distributors and to laboratories desiring certification to perform analytic tests of drinking water.

2.2. Enforcement. -- This rule is enforced by the Commissioner of the Bureau for Public Health or his or her designee.

§64-3-3. Definitions.

3.1. Bottled Water. -- All water which is sealed in bottles, packages or other containers and offered for sale for human consumption, including bottled mineral water.

3.2. Bottled Water Distributor. -- A person who buys and sells bottled water on a wholesale basis.

3.3. Bureau. -- The Bureau for Public Health in the Department of Health and Human Resources.

~~3.3.~~ 3.4. Commissioner. -- Commissioner of the Bureau for Public Health or his or her designee.

3.5. Conjunctive delineation -- The integrated delineation of the ground water contribution area and the surface water contribution area for a public water system.

~~3.4.~~ 3.6. Initial Demonstration of Capability (~~IDC~~) (DOC). -- Before analyzing compliance samples, an analytical team shall demonstrate acceptable precision, accuracy, sensitivity and specificity for the method to be used, as described in the referenced document in subdivision 13.2.a. of this rule.

3.7. Department. -- The West Virginia Department of Health and Human Resources.

3.8. Hydrologic Unit Code. (HUC) -- The basic unit of an ordered grouping of watersheds and sub-watersheds that make up the entire drainage network of the United States. This drainage network was developed by the United States Geological Survey. Each watershed is assigned a unique identification code based on its location and relationship with surrounding watersheds. The hydrologic unit identification code is a number consisting of between 2 to 17 digits depending on factors specific to each watershed. In West Virginia, most major river basins have been assigned one or more 8-digit hydrologic unit codes. Each of these 8-digit hydrologic units has been further divided into smaller watersheds identified by 11, 14, and 17-digit hydrologic unit codes.

3.9. Ohio River Valley Water Sanitation Commission. (ORSANCO) --An interstate water pollution control agency that was established as a provision of and to implement the Ohio River Valley Water Sanitation Compact, signed in 1948 by the governors of Illinois, Indiana, Kentucky, New York, Ohio, Pennsylvania, Virginia and West Virginia.

~~3.5.~~ 3.10. Person. -- An individual, partnership, association, syndicate, company, firm, trust, corporation, government corporation, institution, department, division, bureau, agency, federal agency or any other entity recognized by law.

3.11. Potential Source of Significant Contamination. (PSSC) -- A facility or activity that stores, uses or produces substances or compounds with potential for significant contaminating impact if released into the source water of a public water supply.

~~3.6.~~ 3.12. Proficiency Testing Samples. (PT). -- A sample provided to the laboratory for the purpose of demonstrating that the laboratory can successfully analyze the sample within specified acceptance limits specified in this rule. The qualitative and/or quantitative composition of the reference material is unknown to the laboratory at the time of analysis.

3.13. Public groundwater supply source. -- A primary source of water supply for a public water system which is directly drawn from a well, underground stream, underground reservoir, underground mine or other primary source of water supplies which is found underneath the surface of the state.

3.14. Public surface water supply source. -- A primary source of water supply for a public water system which is directly drawn from rivers, streams, lakes, ponds, impoundments or other primary sources of water supplies which are found on the surface of the state;

3.15. Public surface water-influenced groundwater supply source. -- A source of water supply for a public water system which is directly drawn from an underground well, underground river or stream, underground reservoir or underground mine, and the quantity and quality of the water in that underground supply source is heavily influenced, directly or indirectly, by the quantity and quality of surface water in the immediate area;

~~3.7.~~ 3.16. Public Water System. -- A public water system is: any

3.16.a. Any water supply or system that ~~which~~ regularly supplies or offers to supply water for human consumption through pipes or other constructed conveyances, if serving at least an average of twenty-five individuals per day for at least sixty days per year, or which has at least fifteen service connections, and shall include:

~~(4)~~ 3.16.a.1. Any collection, treatment, storage and distribution facilities under the control of the owner or operator of the system and used primarily in connection with the system; and

(2) 3.16.a.2. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system;

3.16.b. A public water system does not include a system which meets all of the following conditions:

(1) 3.16.b.1. Which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) 3.16.b.2 Which obtains all of its water from, but is not owned or operated by a public water system that otherwise meets the definition;

(3) 3.16.b.3. Which does not sell water to any person; and

(4) 3.16.b.4. Which is not a carrier conveying passengers in interstate commerce.

3.17. Public Water Utility. -- A public water system which is regulated by the West Virginia Public Service Commission pursuant to the provisions of chapter twenty-four of this code.

~~3.8.~~ 3.18. Sanitary Survey. -- An on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of the source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water, as described in the federal regulations adopted in this rule.

~~3.9.~~ 3.19. Secretary. -- The Secretary of the Department of Health and Human Resources.

3.20. Unaccounted for water. -- The water introduced into the distribution system less all metered usage and all known non-metered usage which can be estimated with reasonable accuracy.

3.21. Watershed. --A watershed is an area of land from which surface water drains into a common outlet, such as a river, lake, or wetland.

3.22. Wellhead Protection Area. (WHPA) -- The surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

3.23. Zone of Critical Concern. (ZCC) -- The area for a public surface water supply that is comprised of a corridor along streams within a watershed that warrants more detailed scrutiny due to its proximity to the surface water intake and the intake's susceptibility to potential contaminants within that corridor. The zone of critical concern is determined using a mathematical model that accounts for stream flows, gradient and area topography. The length of the zone of critical concern is based on a five-hour time-of-travel of water in the streams to the water intake, plus an additional one-fourth mile below the water intake. The width of the zone of critical concern is one thousand feet measured horizontally from each bank of the principal stream and five hundred feet measured horizontally from each bank of the tributaries draining into the principal stream.

§64-3-4. Public Water System Construction, Alteration or Renovation; Standards; Exceptions.

4.1. A person shall not construct, alter, renovate or award a contract for any construction, alteration or renovation of a public water system without obtaining a permit from the Commissioner.

4.2. Application for a permit to construct, alter or renovate shall be made to the Commissioner on forms prescribed by the Commissioner at least forty-five working days prior to the date on which approval by the Commissioner is desired. The application shall be accompanied by an engineering report, maps, and detailed plans and specifications of the proposed construction, alteration or renovation prepared by or under the direction of a registered professional engineer.

4.3. The Commissioner may revoke a permit to construct, alter or renovate for failure of the public water system to comply with this rule.

4.4. A permit to construct, alter or renovate is valid for five years from the date of issuance.

4.5. The public water system shall be constructed, altered or renovated in accordance with the plans and specifications approved by the Commissioner in accordance with the Bureau for Public Health rule, Public Water System Design Standards, 64CSR77.

4.6. To the extent practical, all new or expanded facilities shall be located outside the hundred-year flood plain.

4.7. The Commissioner may issue an order requiring a change in the source of the water supply for the system or in the manner of collection, treatment, storage or distribution before delivery to the consumer as may be necessary to safeguard the public health.

4.8. A permit to construct, alter or renovate is not required for any minor addition to, or alteration or renovation of an existing public water system which will not significantly affect the quality or quantity of the water supply service rendered. The work shall be done in accordance with the provisions of the Bureau for Public Health rule, Public Water System Design Standards, 64CSR77.

4.9. A public water system shall submit a written description of the proposed additions, alterations or renovations to the Commissioner no less than ten working days prior to implementing the additions, alterations or renovations under this provision. The Commissioner shall notify the system whether or not the proposed additions, alterations or renovations qualify under this provision within five working days of receipt of the description.

4.10. All public water supply systems using a raw water source which is open to the atmosphere or subject to surface runoff shall, at a minimum, provide filtration treatment.

§64-3-5. Permit to Operate a Public Water System.

5.1. A public water system shall be operated in accordance with this rule and the federal regulations adopted in this rule.

5.2. The Commissioner shall develop a program for the issuance of a permit to operate a public water system. The permit is renewable annually and may be revoked for failure to comply with the requirements of this rule or the federal standards adopted in this rule. The Commissioner shall administer the permit program uniformly and shall not grant a permit until after he or she has completed a sanitary survey.

5.3. In the event of a proposed change in the ownership of a public water system, the new owner shall submit a written application to the Commissioner at least fifteen working days before the proposed change to transfer the permit to operate.

5.4. The current permit to operate shall be posted in a conspicuous place at the public water system's treatment plant or main office.

§64-3-6. Inspections and Sanitary Surveys of Public Water Systems.

6.1. The Commissioner shall inspect public water systems and conduct sanitary surveys in accordance with the federal regulations adopted in this rule.

6.2. The Commissioner has the right of access to all parts of a public water system. The public water system shall furnish the Commissioner access to all information and records required to be kept by this rule and the federal regulations adopted in this rule.

§64-3-7. Public Water System Disinfection Requirements.

7.1. Disinfection with chlorine, chlorine dioxide, chloramine or ozone is required of all public water systems, provided the requirements of subsection 7.6. of this section are met.

7.2. The disinfectant shall be applied during treatment at a point before entering the distribution system which will provide effective log removal.

7.3. Ground water systems shall install chemical disinfection to provide at least a four-log virus inactivation or removal before or at the first customer, for any ground water source. Monitoring requirements are the same as the federal regulations adopted in this rule.

7.4. Surface water systems and groundwater systems under the direct influence of surface waters shall meet the disinfection requirements of the federal regulations adopted in this rule.

7.5. Chlorine residual testing equipment shall enable measurement of free and total chlorine residuals to the nearest 0.2 milligrams per liter.

7.6. For all public water systems, at least 0.2 milligrams per liter of total chlorine residual shall be maintained throughout the distribution system at all times and shall measure the total chlorine residual at least one time per day when serving water to the public and report the results in accordance with section 12 of this rule.

7.7. The Commissioner may authorize exceptions, in writing, in the chlorine disinfection parameters specified in this section. The Commissioner may impose additional monitoring requirements if an exception is authorized.

§64-3-8. Public Water System Fluoridation.

8.1. Average concentrations of fluoride present in the drinking water of a public water system which artificially adjusts fluoride levels shall be no less than ~~0.5~~ 0.6 milligrams per liter and no higher than ~~0.9~~ 0.8 milligrams per liter. The optimum level for artificially adjusted fluoride is 0.7 milligrams per liter.

8.2. Public water systems that plan to make long term changes in the method being used to artificially adjust fluoride levels, such as a change in the chemical composition or the dosage rate, shall notify the Commissioner prior to implementing the proposed change. The commissioner shall approve the change in writing before the public water system may begin implementation of the changes.

8.3. The drinking water of artificially adjusted fluoridated or defluoridated public water systems shall be monitored once each day for fluoride concentration. Records of the monitoring shall be maintained in accordance with Sections 9 and 10 of this rule.

8.4. At least once a month, any public water system that artificially adjusts the fluoride concentrations shall submit a sample of drinking water to the Commissioner or to a certified laboratory for fluoride analysis.

§64-3-9. Public Water System Control Tests and Record Maintenance.

A public water system shall retain records of microbiological, turbidity, radiological and chemical analyses, or a summary of the records, at a convenient location on or near the premises of the public water system, in accordance with the federal regulations adopted in this rule. The Commissioner shall certify a laboratory or laboratories to conduct all tests and analyses required by this rule or the federal regulations adopted in this rule, with the exception of on-site water system operational tests. The public water system shall retain monthly operational reports, containing the information required to be submitted under subsection 12.4 of this rule, for five years.

§64-3-10. Adoption of Federal Regulations.

10.1. The following federal regulations are hereby adopted by reference:

10.1.a. National Primary Drinking Water Regulations, 40 CFR Part 141, with the exception of the monitoring reduction provisions of Subpart Y, the specific portions of Subpart Y which are not being adopted by reference in this rule are as follows:

10.1.a.1. In 40 CFR §141.854 (c) (2), the last three sentences, beginning with "The State may not allow systems to begin less frequent monitoring"...through the end of that subsection;

10.1.a.2. In 40 CFR §141.854, sections (d), (e) and (h) in their entirety;

10.1.a.3. In 40 CFR §141.854 (i) (2) the portion of the sentence that reads; "unless it meets the criteria in paragraphs (i) (2) (i) through (iii) of the section to be eligible for monitoring less frequently than monthly";

10.1.a.4. In 40 CFR § 141.854 (i) (2) the portion of the sentence that reads "unless it meets the criteria in §141.854 (i) (2) (i) through (iii) of this section to be eligible for monitoring less frequently than monthly";

10.1.a.5. In 40 CFR § 141.854 (i) (2) (i) thru (iii) in their entirety.

10.1.a.6. In 40 CFR 141.855 (c) (2), (d), (e) and (f) in their entirety.

10.1.b. National Primary Drinking Water Regulations Implementation, 40 CFR Part 142, Subparts A and F, and Sections 40 CFR 142.20 (b), 142.21; 142.62, 142.63, 142.64 and 142.65; and

10.1.c. National Secondary Drinking Water Regulations, 40 CFR Part 143.

10.2. The Commissioner shall use the provisions of 40 CFR 142.20 (b) and the requirements and procedures of Subpart F of 40 CFR Part 142, as adopted in this rule as applicable in granting exemptions.

Nothing in this section shall authorize the granting of a variance by the Commissioner. For the purpose of granting exemptions, the following changes are made to Subpart F in 40 CFR Part 142:

10.2.a. The term "Commissioner" shall be substituted for the term "Administrator."

10.2.b. The term "West Virginia" shall be substituted for the phrase "State that does not have primary enforcement responsibility."

10.2.c. To meet the requirements of 40 CFR §142.54 (b) (2), the Commissioner need only provide notice to other appropriate State or local agencies at the Commissioner's discretion.

10.3. In the event of a conflict between a federal standard adopted in this rule and a state standard adopted in this rule, the more stringent standard applies.

10.4. ~~These regulations~~ The National Primary Drinking Water Regulations can be viewed online on the internet at <http://water.epa.gov/lawsregs/rulesregs/sdwa/index.cfm>. Copies of these regulations are available in hard copy from:

U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

§64-3-11. Bottled Water Treatment Plants and Distributors.

11.1. No person shall operate a bottled water treatment plant in this State without first receiving from the Commissioner a permit to bottle and distribute water.

11.2. No person shall distribute bottled water in this State without first receiving from the Commissioner a permit to distribute bottled water.

11.3. Application for a permit to bottle and distribute water shall be made to the Commissioner on forms prescribed by the Commissioner. A completed application and a set of plans and specifications for the treatment plant shall be submitted to the Commissioner for approval at least forty-five working days prior to the date on which a permit from the Commissioner is desired.

11.4. The source of the water to be bottled and the bottled water shall comply with Beverages, 21 CFR §165 final regulations promulgated and published as final rules prior to the adoption of this rule, with the exception of Sections 165.3 (b), 165.110 (a) (2) (ii).

11.4.a. The name of the water from a subsurface saturated zone that is under a pressure equal to or greater than atmospheric pressure is "ground water". Ground water found to be under the direct influence of surface water as defined in 40 CFR §141.2, as adopted by this rule, shall be treated by a method approved by the Commissioner.

11.4.b. The bottler shall conduct microbiological monitoring not less than weekly on the finished product.

11.5. A bottled water treatment plant shall be operated in accordance with the provisions of the federal standards, Current Good Manufacturing Practice in Manufacturing, Packaging or Holding Human Food, 21 CFR Part 110, and Processing and Bottling of Bottled Drinking Water, 21 CFR §129.

11.6. The Commissioner shall inspect each in-state bottled water treatment plant every twelve months or as he or she otherwise determines.

11.7. An out-of-state bottled water treatment plant desiring to distribute bottled water in West Virginia shall apply for a permit to bottle and distribute bottled water on forms approved by the Commissioner. The out-of-state treatment plant shall comply with the requirements of this rule and the federal regulations adopted in this rule for in-state bottled water treatment plants. Subsequent to the initial evaluation, monitoring of the treatment plant by the regulatory agency of the state in which the treatment plant is located is considered acceptable for the purposes of this rule. The out-of-state treatment plant shall notify the Commissioner of any corrective action it is required to take by its state regulatory authority and shall notify the Commissioner of any change in ownership or in the event that it closes.

11.8. A person wishing to distribute bottled water in the State who does not operate a bottled water treatment plant shall apply for a permit to distribute bottled water on a form approved by the Commissioner. The applicant shall identify the location of the plants from which the bottled water is obtained and any distributor other than the bottled water plant from which the bottled water is obtained and shall provide other information required by the Commissioner. The Commissioner shall grant a permit to distribute bottled water if the bottled water complies with the requirements of this rule.

11.9. The Commissioner may revoke a permit for failure to comply with provisions of this rule.

§64-3-12. Public Water System Reporting Requirements.

12.1. Unless otherwise specified in this rule or the federal regulations adopted in this rule, a public water system shall report to the Commissioner the results of any test, measurement or analysis required to be made by this rule or the federal regulations adopted in this rule within forty days of the system's receipt of the test, measurement or analysis.

12.2. A public water system shall submit a summary of the public water system operation, test data and other information as may be required by the Commissioner to the Commissioner at least once each month. The Commissioner may require more frequent reports in cases where there are public health concerns.

12.3. All reports and summaries required by this rule or federal regulations adopted in this rule shall be submitted in a manner or form approved by the Commissioner.

12.4. A public water system shall distribute a public notice for any failure to comply with this rule or the federal regulations adopted in this rule. The content, distribution, recordkeeping and reporting of the public notification shall be performed in a time and manner as specified in the federal rules adopted, by reference, in this rule with the exception of Tier 1 public notices. For Tier 1 public notices, the time required for initial public notices and consultation with the state shall be as soon as possible, but no more than twelve hours.

12.5. A public water system shall report to the Commissioner any proposed long term or permanent changes to their water treatment process, such as a change in fluoridation or changes in the chemicals used in the treatment process, in writing at least 60 days prior to the planned date of implementation, to allow for an evaluation of the change in water quality to the consumers.

§64-3-13. Certification of Laboratories to Conduct Drinking Water Tests.

13.1. All laboratories providing drinking water testing results for purposes of this rule or the federal

regulations adopted in by this rule shall be certified by the Commissioner or by the federal Environmental Protection Agency.

13.2. A certified laboratory shall:

13.2.a. Comply with the requirements and criteria contained in the federal Environmental Protection Agency's Manual for the Certification of Laboratories Analyzing Drinking Water, Fifth Edition, EPA 815-R-05-004, January 2005, Supplement I to the Fifth Edition of the Manual to the Certification of Laboratories Analyzing Drinking Water, EPA 815-F-08-006, June 2008, Supplement II to the Fifth Edition of the Manual to the Certification of Laboratories Analyzing Drinking Water, EPA 815-F-12-006, November 2012. In addition, before an analyst is permitted to do any regulatory compliance samples for chemistry, the ~~Initial~~ Demonstration of Capability (~~IDC~~) (DOC) required by each method must be completed. If there are no ~~IDC~~ DOC requirements in the method, the following are guidelines to be used: At a minimum, the ~~IDC~~ DOC shall include ~~a demonstration of the ability to achieve a low background (instrument detection limit), determination of the method detection limit in accordance with the procedure given in §40 CFR 136, Appendix B, and the precision and accuracy of the method. To demonstrate precision and accuracy, at a minimum~~ four replicates of a quality control or reference sample which must be processed through all steps of the analytical procedure and evaluated against laboratory derived acceptance limits. In addition, precision and accuracy must be established if more than one sample preparation technique is used; or

13.2.b. Comply with the requirements of this rule and hold a certificate of recognition from the National Environmental Laboratory Accreditation Program (NELAP) for the analysis of drinking water; or

13.2.c. Any other accreditation determined to be equivalent by the Commissioner.

13.3. An in-state laboratory shall submit an application form when seeking initial approval at least sixty days prior to the date certification is desired.

13.4. A laboratory located outside the boundaries of this state shall be certified by the Commissioner if:

13.4.a. It has been certified by the federal Environmental Protection Agency; or

13.4.b. It has been certified by a program for the certification of laboratories equivalent to the program of this state as determined by the Commissioner. If the program of the state in which the laboratory is located is not judged equivalent, the laboratory may request an on-site evaluation and full certification review by the Commissioner. The Commissioner may charge a fee for all expenses incurred for an on-site survey of an out-of-state laboratory.

13.5. An out-of-state laboratory shall submit an application form when seeking initial approval and shall include with its application evidence of compliance with ~~subsection~~ subdivision 13.4.a. or 13.4.b. of this section. The out-of-state laboratory shall notify the Commissioner immediately of any change in its certification status under ~~subsection~~ subdivision 13.4.a. or 13.4.b. of this ~~rule~~ section.

13.6. The Commissioner shall conduct on-site inspections of in-state laboratories to determine compliance with this rule and the federal standards adopted in this rule initially prior to certification, and at least every three years thereafter. The bureau has the right of entry upon proper identification at any time considered necessary during operating hours in order to conduct the inspections.

13.7. The Commissioner shall issue certificates of approval upon initial approval and shall renew the certificates on an annual basis thereafter pursuant to the conditions listed in this rule. Certificates issued shall contain the name and location of the laboratory, a laboratory code number, the signatures of the State's Office of Laboratory Services' Director and Certification Officers, and the date of expiration of the certificate.

13.7.a. Certified laboratories shall participate in a proficiency testing water study within the first three months of the calendar year. The study shall have a closing date no later than the last working day of March. If the Commissioner does not receive proficiency testing water study results by the end of May of each calendar year, the Commissioner shall downgrade the laboratory to "provisionally certified" for each certified parameter not analyzed.

13.7.b. For a drinking water laboratory to maintain certification the Commissioner must receive an acceptable proficiency testing water study result for each certifiable parameter and by each approved method for which the laboratory holds, or is seeking, certification by between January 1 and September 30 of each year. The proficiency testing provider shall forward the water study results directly to the Commissioner; photocopies from the laboratory will not be accepted.

13.8. Certified laboratories shall notify the Commissioner when there is a change in ownership, laboratory director, technical personnel or location of the laboratory.

13.9. Certified laboratories shall submit to the Commissioner all required or requested data, information and reports in a manner or form approved or provided by the Commissioner.

13.10. Certified laboratories shall accept chemistry compliance monitoring samples only in containers that have been demonstrated and documented to be free of regulated or interfering contaminants. This demonstration shall be accomplished through testing using an approved drinking water method. The contaminants of interest must be shown to be below detectable levels on a representative container from any given lot after exposure to reagent water and any required preservatives.

13.11. Certified laboratories shall reject any public water system compliance monitoring sample that has exceeded its holding time for the indicated testing parameters, has not been received at the required temperature or pH, or does not contain the required preservatives, or is not in an approved container. Upon a rejection, the certified laboratory shall then notify the submitting public water system and the sample originator in a timely manner to allow for resampling and resubmission to prevent noncompliance with Federal regulations and State rules and endangerment of public health.

13.12. The Commissioner shall administer and use the criteria and procedures of the section titled "Criteria and Procedures for Downgrading/Revoking Certification Status" of the Manual for the Certification of Laboratories Analyzing Drinking Water referenced in subsection 13.2 of this section, when a laboratory's noncompliance with the Manual and/or the provisions of this rule is detected.

13.13. For each parameter and method the laboratory holds certification and receives an unacceptable evaluation from the proficiency testing provider, shall submit a pre-placement proficiency testing study to the Commissioner within 90 days of being notified of the unacceptable result. Failure to comply shall result in the parameter or method, or both, being downgraded.

13.14. For each parameter and method the certified laboratory has two consecutive unacceptable evaluations from the proficiency testing provider shall have the aforementioned parameter or method, or both, downgraded to "provisionally certified".

13.15. A laboratory requesting reinstatement due to unacceptable proficiency testing water study performance must provide two consecutive proficiency testing water studies which have been evaluated to be acceptable by the proficiency testing provider.

§64-3-14. Source Water Protection Program.

14.1. This rule establishes a statewide program for development and implementation of source water protection and planning. This program is intended to protect water supply sources from contamination due to substances entering the groundwater or surface water bodies which are used as water supply sources by public water systems and public water utilities.

14.2. The requirements specified in this rule are minimum requirements and shall not prevent a public water utility or a public water system from taking additional steps to protect its wells, springs, wellfields, or surface water intakes.

14.3. On or before July 1, 2016, each existing public water utility which draws and treats water from a surface water supply source or a surface water influenced groundwater supply source shall submit to the commissioner an updated or completed source water protection plan for each of its public water system plants to protect its public water supplies from contamination. The schedule for submission of the source water protection plans is set forth in section 16 of this rule.

14.4. The West Virginia Source Water Protection Program consists of two types of delineations for the West Virginia waterways. These are a broad Watershed Delineation Area (WSDA) and a detailed Zone of Critical Concern (ZCC) delineation.

14.4.a. The Watershed Delineation Area (WSDA) includes the entire watershed area upstream from a public water utility intake structure, up to the boundary of the state borders, a topographic boundary and is the perimeter of the catchment area that provides water to the water supply intake. This delineation will use available hydrologic unit codes (HUC) based on the watershed network established by the United States Geological Survey (USGS). The WSDA is an area where a general inventory can be performed by the Public Water System. A more detailed inventory and management plan may be warranted based upon the type and number of existing potential sources of significant contamination (PSSC).

14.4.b. The Zone of Critical Concern (ZCC) is a corridor along the streams, lakes, and reservoirs within the Watershed Delineation Area (WSDA) that warrants a more detailed inventory and management of potential sources of significant contamination due to its proximity to the source water intake and to the susceptibility to potential contaminants.

14.4.b.1. Zone of Critical Concern delineations consist of the following:

14.4.b.1.A. Free flowing streams within the Watershed Delineation Area (WSDA) using the following configuration:

14.4.b.1.A.1. Width along the source stream is --1000 feet from each bank of the principal stream and 500 feet from each bank of all tributaries draining into the principal stream.

14.4.b.1.A.1.(a) For purposes of this rule, these terms have the following definitions:

14.4.b.1.A.1.(a)(1) *bank* means the sides of a river or stream between which the water normally flows;

14.4.b.1.A.1(a)(2) the *principal stream* is defined as the stream where the source water intake for the public water utility is located; and

14.4.b.1.A.1(a)(3) *tributaries* are all other waterways flowing into the principal stream.

14.4.b.1.A.2. Length along the source stream is determined based on a 5-hour time of travel using an estimated 90 percent high flow rate that is equaled or exceeded on 10% of the days during the period of record or up to the next upstream intake, where it is available. If high flow rate data is not available through a mathematical model to calculate flow time then a 5-MPH flow rate is used.

14.4.b.1.B. Reservoirs or lakes within the Watershed Delineation Area (WSDA) using the following standards:

14.4.b.1.B.1. Width --1000 feet from each bank of the reservoir and 500 feet from each bank of the tributaries draining into the reservoir or lake.

14.4.b.1.B.2. Length along the source stream feeding into the reservoir or lake. The free flow stream segment will be delineated following the free flow stream procedure. If a lake or reservoir is encountered within the five hour time of travel, the following delineation will take place. If the length of the lake or reservoir is less than or equal to the five hour calculated time of travel distance from the intake then the entire water body will be included. If the length of the lake or reservoir is greater than the calculated five hour time of travel distance from the intake then the section of water body within the five hour time of travel distance will be used to establish the Zone of Critical Concern (ZCC).

14.4.b.1.C. Ohio River Delineation --The Ohio River will use a tiered delineation system consisting of two protection zones for each Ohio River surface intake consisting of the following: Zone 1 --Zone of Critical Concern --The area adjacent to the Ohio River from 1/4 mile downstream of the intake to a distance of 25 miles (equivalent to a 5-hour time of travel) upstream or the next upstream intake. The lateral extent of this zone extends 1/4 mile on both sides of the river and major tributaries. Zone 2 --Source Water --The entire portion of the Ohio River Basin upstream of the surface intake. This is equivalent to the West Virginia Watershed Delineated Area for the West Virginia waterways.

14.4.c. Conjunctive delineations will consist of the following for public surface water influenced groundwater supply sources.

14.4.c.1. Commissioner will determine whether or not a conjunctive delineation is required on a case by case basis.

14.4.c.2. The criteria that the state will use will be based on identification between selected parameters in the wells and in surface water in the nearby streams. Using this information, the commissioner will develop a statewide guidance standard for the designation.

14.4.c.3. If a public water supply has been determined to be under the influence of surface water and its WHPA intersects the surface water body, then this system will be required to do a modified (full or partial) surface delineation in addition to the ground water delineation.

14.5. Efforts shall be made by the water utility to inform and engage the public, local governments, local emergency planners, local health departments and affected residents at all levels of the development of the protection plan.

14.6. The completed or updated plan for each affected plant, at a minimum, shall include the following:

14.6.a. A contingency plan that documents each public water utility's planned response to contamination of its public surface water supply source or its public surface water influenced groundwater supply source;

14.6.b. An examination and analysis of the public water system's ability to isolate or divert contaminated waters from its surface water intake or groundwater supply, and the amount of raw water storage capacity for the public water system's plant;

14.6.c. An examination and analysis of the public water system's existing ability to switch to an alternative water source or intake in the event of contamination of its primary water source;

14.6.d. An analysis and examination of the public water system's existing ability to close its water intake in the event the system is advised that its primary water source has become contaminated due to a spill or release into a stream, and the duration of time it can keep that water intake closed without creating a public health emergency;

14.6.e. The following operational information for each plant receiving water supplies from a surface water source shall include:

14.6.e.1. The average number of hours the plant operates each day, and the maximum and minimum number of hours of operation in one day at that plant during the past year; and

14.6.e.2. The average quantities of water treated and produced by the plant per day, and the maximum and minimum quantities of water treated and produced at that plant in one day during the past year;

14.6.f. An analysis and examination of the public water system's existing available storage capacity on its system, how its available storage capacity compares to the public water system's normal daily usage;

14.6.g. The calculated level of unaccounted for water experienced by the public water system for each surface water intake. The public water utility shall use the same method used in the Public Service Commission's rule, Rules for the Government of Water Utilities, 150CSR7, section 5.6., to determine and report on their unaccounted for water. If the calculated percentage of unaccounted for water is in excess of fifteen percent, the public water system shall describe all of the measures it is actively taking to reduce the level of water loss experienced in its system;

14.6.h. A list of the potential sources of significant contamination contained within the zone of critical concern as provided by the Department of Environmental Protection, the Bureau for Public Health and the Division of Homeland Security and Emergency Management in accordance with the provisions of WV Code §16-1-9c(b)(8) and §22-31-4.

14.6.h.1. Examples of land uses and activities which are considered to be potential sources of significant contamination may be further described in the guidance document to be published by the Commissioner.

14.6.h.2. The exact location of the contaminants within the zone of critical concern is not subject to public disclosure in response to a Freedom of Information Act request under article one, chapter twenty-nine-b of the WV Code.

14.6.h.3. The location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern shall be made known to one or more designees of the public water utility, and shall be maintained in a confidential manner by the public water utility.

14.6.h.4. In the event of a chemical spill, release or related emergency, information pertaining to any spill or release of contaminant shall be immediately disseminated to any emergency responders responding to the site of a spill or release, and the general public shall be promptly notified in the event of a chemical spill, release or related emergency that poses a potential threat to public health and safety.

14.6.h.5. Any public water utility may identify additional potential sources of significant contamination that are located outside of the zone of critical concern if it deems those potential sources to be of concern to the integrity of the water supply.

14.6.i. If the public water utility's water supply plant is served by a single-source intake to a surface water source of supply or a surface water influenced source of supply, the submitted plan shall also include an examination and analysis of the technical and economic feasibility of each of the following options to provide continued safe and reliable public water service in the event its primary source of supply is detrimentally affected by contamination, release, spill event or other reason:

14.6.i.1. Constructing or establishing a secondary or backup intake which would draw water supplies from a substantially different location or water source;

14.6.i.2. Constructing additional raw water storage capacity and/or treated water storage capacity, to provide at least two days of system storage, based on the plant's maximum level of production experienced within the past year;

14.6.i.3. Creating or constructing interconnections between the public water system with other plants on the public water utility system or another public water system, to allow the public water utility to receive its water from a different source of supply during a period its primary water supply becomes unavailable or unreliable due to contamination, release, spill event or other circumstance;

14.6.i.4. Any other alternative which is available to the public water utility to secure safe and reliable alternative supplies during a period its primary source of supply is unavailable or negatively impacted for an extended period; and

14.6.i.5. If one or more alternatives set forth in paragraphs 14.6.i.1 through 14.6.i.4 of this subdivision is determined to be technologically or economically feasible, the public water utility shall submit an analysis of the comparative costs, risks and benefits of implementing each of the described alternatives.

14.6.j. A management plan that identifies specific activities that will be pursued by the public water utility, in cooperation and in concert with the Bureau for Public Health, local health departments, local emergency responders, local emergency planning committee, and other state, county or local agencies and organizations to protect its source water supply from contamination, including, but not limited to, notification to and coordination with state and local government agencies whenever the use of its water supply is inadvisable or impaired, to conduct periodic surveys of the system, the adoption of best management practices, the purchase of property or development rights, conducting public education or the adoption of other management techniques recommended by the commissioner or included in the source water protection plan;

14.6.k. A communications plan that documents the manner in which the public water utility, working in concert with state and local emergency response agencies, shall notify the state and local health agencies and the public of the initial spill or contamination event and provide updated information related to any contamination or impairment of the source water supply or the system's drinking water supply, with an initial notification to the public to occur in any event no later than thirty minutes after the public water system becomes aware that the spill, release or potential contamination of the public water system poses a potential threat to public health and safety;

14.6.l. A complete and comprehensive list of the potential sources of significant contamination contained within the zone of critical concern, based upon information which is directly provided or can otherwise be requested and obtained from the Department of Environmental Protection, the Bureau for Public Health, the Division of Homeland Security and Emergency Management and other resources; and

14.6.m. An examination of the technical and economic feasibility of implementing an early warning monitoring system.

14.6.n. Plans must be signed by a West Virginia Registered Professional Engineer (PE).

14.6.n.1. In the alternative, if the public water utility does not have a PE to sign their plan, it is acceptable to have the SWPP signed by the Chief Executive Officer of a privately owned water utility; or

14.6.n.2. In the alternative, if the public water utility does not have a PE to sign their plan, it is acceptable to have the SWPP signed by the Board Chairman or other presiding officer of a publicly owned water utility.

14.7. Any public water utility's public water system with a primary surface water source of supply or a surface water influenced groundwater source of supply that comes into existence on or after July 1, 2014 shall submit, prior to the commencement of its operations, a source water protection plan satisfying the requirements of subsection 14.6. of this section.

14.8. The commissioner shall review a plan submitted pursuant to this section and provide a copy to the Secretary of the Department of Environmental Protection.

14.8.a. Within one hundred eighty days of receiving a plan for approval, the commissioner may approve, reject or modify the plan as may be necessary and reasonable to satisfy the purposes of this rule.

14.8.b. The commissioner shall consult with the local public health officer and conduct at least one public hearing when reviewing the initial source water protection plan that has been updated or completed. The public hearings required by this rule may be scheduled in conjunction with one or more

public water utilities in the same watershed and shall be held after notice to the public in all affected locations.

14.8.c. The failure by any public water utility to comply with its source water protection plan approved pursuant to this rule is a violation of this rule and may be subject to penalties set forth in section 17 of this rule.

14.9. The commissioner may request a public water utility to conduct one or more studies to determine the actual risk and consequences related to any potential source of significant contamination (PSSC) identified by the plan, or as otherwise made known to the commissioner.

14.10. Any public water utility required to file a complete or updated plan in accordance with the provisions of this rule shall submit an updated source water protection plan at least every three years or when there is a substantial change in the potential sources of significant contamination within the identified zone of critical concern.

14.11. Any public water utility required to file a complete or updated plan in accordance with the provisions of this section shall review any source water protection plan it may currently have on file with the bureau and update it to ensure it conforms with the requirements of this rule on or before July 1, 2016.

14.12. The commissioner's authority in reviewing and monitoring compliance with a source water protection plan may be transferred by the bureau to a nationally accredited local board of health.

§64-3-15. Well head and source water protection grant program.

15.1. The commissioner shall continue the Wellhead and Source Water Protection Grant Program.

15.1.a. The fund heretofore created to provide funds for the Wellhead and Source Water Protection Grant Program is continued in the State Treasury and shall be known as the Wellhead and Source Water Protection Grant Fund.

15.1.b. The fund shall be administered by the commissioner and shall consist of all moneys made available for the program from any source, including, but not limited to, all fees, civil penalties and assessed costs, all gifts, grants, bequests or transfers from any source, any moneys that may be appropriated and designated for the program by the Legislature and all interest or other return earned from investment of the fund.

15.1.c. Expenditures from the fund shall be for the purposes set forth in this rule to provide water source protection pursuant to the program and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of the WV Code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of the WV Code.

15.1.d. For the fiscal years ending June 30, 2014 and 2015, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature.

15.1.e. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

15.2. In prospectively awarding any grants under the Wellhead and Source Water Protection Grant Program, the commissioner shall prioritize those public water systems where there is the highest probability of contamination of the water source based on the source water assessment report or the source water protection plans which were previously performed. Priority shall also be extended to publicly owned public water systems over privately owned public water systems.

15.3. The commissioner, or his or her designee, shall apply for and diligently pursue all available federal funds to help offset the cost of completing source water protection plans by the deadlines established in section nine-c, article one, chapter sixteen of the WV Code.

15.4. The commissioner may receive any gift, federal grant, other grant, donation or bequest and receive income and other funds or appropriations to contribute to the Wellhead and Source Water Protection Grant Program.

§64-3-16. Source water protection plan submission schedules and watershed descriptions.

16.1. The commissioner may organize the public water utilities required to submit Source Water Protection Plans (SWPP) under this rule by watersheds. Grouping the public water utilities in this manner will enhance protection of the public water supply by looking at the potential sources of significant contamination (PSSC) across the entire watershed to protect all downstream uses of water from any contamination occurring upstream.

16.2. To better manage the state's streams, the State is divided into 32 HUC-8 watersheds by the West Virginia Department of Environmental Protection. Those streams are further consolidated into one of five hydrologic regions (Regions 1 - 5). All source water streams that provide intakes for public water utilities are assigned to one of the five regions for purposes of collecting and reviewing the SWPP submitted by public water utilities in each watershed.

16.3. The watershed designations are as follows:

16.3.a. Region 1 Watershed – Contains the Upper Ohio North, Upper Ohio South, Middle Ohio North, Middle Ohio South and Little Kanawha HUC-8 watersheds.

16.3.b. Region 2 Watershed – Contains the Dunkard, Monongahela, West Fork, Tygart Valley, Cheat and Youghiogheny HUC-8 watersheds.

16.3.c. Region 3 Watershed – Contains the North Branch Potomac, South Branch Potomac, Cacapon, Shenandoah Hardy, Potomac Direct Drains and Shenandoah Jefferson HUC-8 watersheds.

16.3.d. Region 4 Watershed – Contains the Lower Kanawha, Upper Kanawha, Elk, Gauley, Greenbrier, Coal, Lower New, Upper New, and James HUC-8 watersheds.

16.3.e. Region 5 Watershed – Contains the Lower Ohio, Lower Guyandotte, Upper Guyandotte, Big Sandy, Twelvepole and Tug Fork HUC-8 watersheds.

16.4. To the greatest extent possible, all public water utilities in the Region 5 Watershed are encouraged to submit their SWPP to the bureau no later than July 1, 2015 for one or more public hearings to be conducted on all plans submitted from the public water utilities in the Region 5 Watershed from October through December, 2015.

16.5. To the greatest extent possible, all public water utilities in the Region 4 Watershed are encouraged to submit their SWPP to the bureau no later than October 1, 2015 for one or more public hearings to be conducted on all plans submitted from the public water utilities in the Region 4 Watershed from January through March, 2016.

16.6. To the greatest extent possible, all public water utilities in the Region 1 Watershed are encouraged to submit their SWPP to the bureau no later than January 1, 2016 for one or more public hearings to be conducted on all plans submitted from the public water utilities in the Region 1 Watershed from April through June, 2016.

16.7. To the greatest extent possible, all public water utilities in the Region 2 Watershed are encouraged to submit their SWPP to the bureau no later than April 1, 2016 for one or more public hearings to be conducted on all plans submitted from the public water utilities in the Region 2 Watershed from July through September, 2016.

16.8. All public water utilities in the Region 3 Watershed, and any public water utilities from the other watersheds that have not previously submitted their SWPP, are required to submit their SWPP to the bureau no later than July 1, 2016 for one or more public hearings to be conducted on all plans from the public water utilities in the Region 3 Watershed submitted by December 31, 2016.

16.9. The grouping of public water utilities required to submit SWPP to the Bureau into regional watersheds is proposed for the efficiency and convenience of the water utilities and the citizens served by them. Nothing in this rule prohibits a public water system from submitting their SWPP to the Bureau at any time prior to the due date for all plans of July 1, 2016. Every public water utility shall submit their SWPP to the Bureau no later than July 1, 2016.

§64-3-14. §64-3-17. Penalties.

17.1. Any person who violates any provision of this rule or orders issued under this rule is subject to injunction, criminal prosecution, and criminal, civil and administrative fines, all as provided in W. Va. Code §§16-1-9, 16-1-9a, 16-1-9c, 16-1-17 and 16-1-18.

17.2. Any individual or entity who violates the provisions of this rule or any orders issued pursuant to this rule is liable for a civil penalty of not less than \$1,000 nor more than \$5,000. Each day's violation constitutes a separate offense.

17.3. Any individual or entity who commits a willful violation of any provision of this rule or orders issued pursuant to this rule shall be subject to a civil penalty of not more than \$10,000 and each day's violation shall be grounds for a separate penalty.

17.4. Civil penalties under this section are payable to the commissioner. All moneys collected under this rule shall be deposited into a restricted account known as the Safe Drinking Water Fund. All moneys deposited in the fund shall be used by the commissioner to provide technical assistance to public water systems.

17.5. The commissioner may also seek injunctive relief in the circuit court of the county in which all or part of the public water system is located.

~~§64-3-15.~~ §64-3-18. Administrative Due Process.

Those persons adversely affected by the enforcement of this rule desiring a contested case hearing to determine any rights, duties, interests or privileges shall do so in accordance with the Bureau for Public Health rule, Rules of Procedure for Contested Case Hearings and Declaratory Rulings, 64CSR1.